



MATHEW HALE
Justic. de Banco Miles Capitalis
For w. shroombury at the sign of the Bible In Duck Lane
Regis Ano 1681
F H Van Houe Sculp:





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PLEAS
OF THE ¹⁴⁷
CROWN:
OR, A
Methodical Summary
OF THE
PRINCIPAL MATTERS
relating to that Subject.

By Sir *Matthew Hale*, Knight,
Late Chief Justice of the King's Bench.

T O

Which is now added a Learned Treatise Written
by the same Author, Touching Sheriff's Ac-
counts; and a Tryal of Witches at the Assizes
held at St. Edmonds Bury in Suffolk, before the
said Sir *Matthew Hales*, when he was Lord
Chief Baron of the Court of Exchequer.

L O N D O N: Printed by the Assigns of *Richard and Edward Atkyns*, Esquires: For *D. Brown*, without Temple-Bar, and *J. Walthoe*, in the Middle-Temple-Cloysters, 1707.

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THE PREFACE.

THere was lately published an Impression, such as it was, of this Book without any name of Author to it, but yet was commonly given out to have been written by the late chief Justice Sir Matthew Hale, and sold for a Book of his writing. The Original indeed was written by him many years since : but that Impression, as it seems, was from a surreptitious and very faulty Copy, and was accordingly very faulty and corrupt throughout in many respects, what by Omissions not only of Marginal References very frequently, but of many intire Paragraphs, whereby the Book it self is in many places mutilated, as the Reader may easily observe pag. 19. 23. 48. 52. 57. 108. 110. 122. 183. 187. 200. 202. 203. 208. of that Impression compared with

A 2 this,

The Preface.

this, besides divers other shorter, but not less material Notes left out in other placees : what by Omissions and Mistakes of single words, sentences, and parts of sentences, and sometimes by an unskilful critical indeavour to restore to some sense what those mistakes had made non-sence, whereby the sense is in many places maimed and broken, in some much altered, and in some expressed quite contrary to the Authors words and meaning. Instances whereof the Reader may see pag. 2. lin. 17. p. 4. l. 1. p. 7. l. 6. p. 10. l. 17. p. 14. l. 6. p. 15. l. penult. p. 10. l. 13, &c. the like throughout the whole Book. And what by Transposition of divers matters misplaced among other things to which they have little or no affinity or relation, whereby they are not only wanting in their proper places, but the order and coherence of those other matters among which they are interposed, is interrupted and confounded : Thus one half of the matter belonging to the Title Proces, which should have bin continued pag. 176. is placed pag. 191. 192, 193. under the tit. Pleas, and

The Preface.

and the greatest part of the title Principal and Accessiary which should have bin continued pag. 196. is there left off in the midst of a sentence and placed before at page 177. as if it was the beginning of the title: and under the same title four Paragraphs together, which belong to Accellaries after, and should have been continued pag. 180. where in the Original they have a connexion with what immediately precedes and follows, are placed before at pag. 179. among what belongs to Accessaries before. Again the greatest part of what belongs to the Title Clergy, and should have bin continued pag. 191. is placed pag. 197, &c. under the tit. Arrainment. To these might be added other faults and mistakes, but these may suffice to shew the general corruption of that Impression.

And though divers of these faults and mistakes are not to be imputed to any Negligence in the Transcriber or Publisher, (whereof notwithstanding he cannot be acquitted in others) but partly to his unacquaintance with the Authors hand; and partly to his

The Preface.

Ignorance of his way of writing, who frequently at the end of his Chapters or Sections used to leave more or less blank paper, and when other matter occurred, more than could be inserted in those places, did many times write the rest in some other place, where he found most room for it, and for the most part without any note of reference to it ; so that it was very difficult for any, who was not well acquainted with his writings , to reduce those transpositions to their proper places ; and therefore of the many Copies, which are abroad of this Book, I could never yet see any free from divers such mistakes : yet by this means (to mention no other) whether through want of Skill, or of Care, or of acquaintance with the Authors hand and way of writing , both the Author himself was much injured by the Publication in that manner, and the Reader also.

Wherfore to do some Right to the Memory of the deceased Author, and to the Publick , and more particularly in some sort (as far as in respect of some circumstances was thought fit) to gratifie the

The Preface.

the Gentlemen of this honourable Profession of the Law, who possibly may take ill to be totally deprived of the benefit of the writings of so great a Master in it, it was thought good by a friend of the Authors, (whose care the Author desired in the Publication of his writings, after his death) to furnish the Book-Sellers with a compleat Copy corrected according to the Authors Original, only what things were therein transposed were in the Copy reduced to their proper places according to his mind.

To this end it is fit also that the Reader be acquainted that this Book was written many years since, about the end of the Reign of King Charles the First, or not many years after; was not by the Author intended for the Press, nor fitted for it; and as he saith in a Letter to one of his honorable Brethren, to whom he lent it, was then never read over by him since he wrote it, as the Reader may of himself perceive by some faults, which had escaped him in writing, and remain uncorrected, as pag. 8. lin. 22.

A 4 after

The Preface.

after the word Dower it is apparent that the word [saved] or some such is wanting (which in the former Impression was indeavour'd to be amend'd, but not without diminution of the Authors meaning) and some others, which are left to the Reader to correct according to his own judgment, a method often approved by the most judicious Criticks in the publishing of other mens writings, and for some special reasons at this time thought fit to be observed in this.

But lest while we indeavour to do Right to the Author, we should do wrong to his Book, the Reader must also know, that notwithstanding what hath been said, this Book hath bin well accepted and esteemed by divers of the most eminent Lawyers, who much desired and obtained of the Author himself to have Copies of it many years since. And though probably the Authour never at all read it entirely over after he wrote it, yet it is certain he many years after made divers occasional additions to it: and, if I be not much mistaken, he did usually carry it with him in his Circuits. He

The Preface.

He hath written a large Work upon
his Subject, intituled, An History of
the Pleas of the Crown, wherein he
doth shew what the Law anciently was in
these matters, what Alterations have
from time to time been made in it, and
what it is at this day. He wrote it
with a purpose to be printed, finished it,
and it all transcribed for the Press in
a short life-time, and had revised part of
it after it was transcribed: but whether,
or when it will be published is un-
certain. In This he doth summarily re-
ceive what the Law is at this time, or rather
was when he wrote it, for some Al-
terations it hath since received, though
there be many, by some late Statutes; and
therefore may not only be of use till
it be published, but may also continue
good use after that is published, when
ever it be, as the most proper Intro-
duction for Students to this part of
Law that is extant, and as a Sy-
nopsis or Epitome of the most useful
part of that.

1st printed
in 1736

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C. M. Car. *Coke upon Mag. Chart.*
C. West. I. *Coke upon W. I.*
C. PC. *Coke's Pleas of the Crown*
Com. *Plowden's Commentaries.*
Cr. & Crom. *Crompton.*
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Dy. *Dyer's Reports.*
Kel. *Kelwaye's Reports.*
Lamb. *Lambert's Justice.*
S. PC. *Stamford's Pleas of the Crown.*
4. R. *Coke's fourth Report.*
9. R. *Coke's ninth Report.*

I License this Book to be printed
by William Shrewsbury,
18th Mart.

1677.

Ri. Raynsford

PLEAS OF THE CROWN.

THIS Treatise (is) divided under these Considerations;

1. Of the *Kinds* of Offences.

2. Of the *Incidents* unto these Offences.

The *Kinds* of the Offences are distinguished according to the diversity of the Laws by which they are introduced, *viz.*

Offences by the Common Law.

Offences by the Statute.

Offences by the Common Law distinguish'd according to the degrees of the Offence.

Pleas of the Crown.

S Capital,
} Not Capital.

Of *Capital* Offences, they are such

1. As are immediately against
God.

2. Immediately against Man.

Those that are Offences *not Capital* by Common Law, as Misprisi-
ons, Maihem, Breach of the Peace,
&c.

Offences *by the Stat.* S Capital.
} Not Capital

The latter are many, and not here
to be treated of.

Heresie.

Heresie.

NOw first concerning Offences Capital, that are *immediately* against the Divine Majesty, which

Heresie,
and
Witchcraft.

i. Concerning *Heresie*, wherein
onsiderable,

I. What is Heresie?

At this day all those former Acts C. Pl. c. 5.
which determined certain Points to St. 1 El. c. 1.
the Heresie stand repealed; and ^{Wing: platinus:}
though there be no express Act de- ^{Lol. 4.}-
termining what shall be said Heresie,
yet the Statute of 1 El. c. 1. direct-
ing the High Commission, restrains
it.

i. To what formerly determined
Heresie, by the Authority of the
Canonical Scriptures.

2. To what adjudged so by the
first four General Councils.

3. To what expressly adjudged
B 2 Heresie

Heresie by any other General Council by express words of Canonical Scripture.

4. To what so determined by Parliament by assent of the Convocation.

II. Who to judge of Heresie?

I. The Temporal Judge cannot punish any Person for Heresie by Indictment or otherwise :

But yet incidently he may take knowledge whether a Tenant be Heresie, or not : As where by force of the Statute of 2 Hen. 4. now repealed, *Kesar* was committed for saying, *That though he were Excommunicate by the Archbishop, he was not so before God* : and *Warner* committed for saying, *Non Tenetur solver decimas*, and thereupon imprisoned In a *Habeas Corpus* by the former and a special Justification in a Action brought by the latter, adjudged neither Heresie.

2. All the Statutes that gave power to Arrest or Imprison for Heresie viz. 2 Hen. 4. 15. 2 H. 5. 7. 5 R. 2 c. 5. 1 & 2 Ph. & Mar. c. 6. are repealed by 1 Eliz.

III. Th

M. 5 E. 4. Rot.
143. coram
Rege.

M. 11 H. 7.
R. 327. C. B.

III. The way to *Convict* of Heresie.

I. By the Common Law.

1. By the Archbishops and Bishops in a General Synod.

2. By the Bishop of the Diocese. ^{in P. & R. Stat. 23 H. 8. c. 9. as I think;}
^{Wing. Mass. 82}

2. By the Stat. 23 H. 8. c. 9.

By the Archbishop in case of the assent or neglect of his Suffragan.

IV. The *Punishment* of a party convict of Heresie.

Upon Certificate of such Conviction, a Writ *De Hæretico Comburendo* granted, without which they cannot proceed to any temporal punishment.

But if after Conviction he abjure his Opinion, his life (is) saved.

But if he relapse after Abjuration, then irrecoverable.

§. But (by) the Statute 2 H. 5.

2. all Statutes which introduc'd any Forfeiture stand repealed : Neither did the Common Law inflict any Forfeiture, because the proceeding was only *pro salute animæ*.

Witchcraft.

C. P. c. 6.

AT Common Law Witchcraft punished with death, as Heresie, by Writ *De Hæretico Combrenendo.*

The Statute of 1 Jac. 12. the only Law now in force against it, and divides it into *two Degrees*:

I. Witchcraft in the *first Degree* made Felony without benefit of Clergy, including *four Species*:

1. *Invocation* or Conjuration of an Evil Spirit.

2. *Consult, covenant with, entertain, employ, feed, or reward* any Evil Spirit to any intent, (though no act be done thereupon.)

3. *Take up any dead Person, or any part thereof, to be employed or used in Witchcraft, Charm, &c* (though not actually used or employed.)

4. Exer-

4. Exercise any Witchcraft, Inchantment, Charm, or Sorcery, whereby *any Person* shall be *killed, destroyed, consumed, or lamed* in his her Body, or any part thereof which requires the act to be done, (laming, consuming, &c.)

These and all Accessary before to suffer as Felons without Clergy : but Accessaries may be after ; but when they have Clergy, because not specially excluded.

II. Witchcraft in the second Degree.

1. (To) *take upon them* by Witchcraft, Inchantment, Charm, or Sorcery *to tell where Treasure* is to be found : They that take upon them to do it, though they cannot, yet within this Law.

2. Or where Goods (lost) or stollen may be found.

3. Or to the intent to *provoke* any Person *to unlawful Love* ; these Clauses come under the word [*taking upon.*]

Witchcraft.

4. Whereby Goods or Cattel shall be *destroyed* (which requires an actual destroying, and not a bare taking upon them).

5. Or shall use Witchcraft, &c. *to hurt any Person*, though the same be not effected.

The *Punishment* of these,

1. The first Offence a years Imprisonment and Pillory.

2. The second Offence Felony: but this requires:

1. An actual conviction and Judgment for the first.

2. The second Offence must be committed after the Judgment for the first.

The like in Forgery, Transportation of Sheep, &c.

But the Consequents upon an Attainder, viz. Corruption of Blood, and loss of Dower: but during life the Lands forfeit.

And Note, a Saving against Corruption of Blood preserves the Descent; and a saving of the Land to the Heir prevents corruption of Blood.

High

High Treason.

Concerning Offences *against man* immediately distinguishing in their Judgment or Event : Capital, or not Capital.

Capital, either by the Common Law or the Statutes ; and these either Treason or Felonies.

and
reason, either } High Treason,
or
Petit Treason.

High Treason : and this though an Offence at Common Law, yet because there be some mixtures of introductions of new Treasons by Statute, would be considered together.

i. Considering High Treason, it distinguished into *four kinds* :

1. That which concerns immediately the King, or his Wife, or Children.

2. That

High Treason.

2. That which concerns Officers in the Administration of Justice.
3. That which concerns the Seal.
4. That which concerns the Coin.

Before we come to the Particulars, some things to be generally promised.

1. That those that have any disability upon them, that disable them to act reasonably, cannot commit Treason, *viz.* *Non compos mentis* and Infants within the Age of discretion.

And therefore if a Traytor becomes *Non compos* before Conviction, he shall not be Arraigned; after Conviction, he shall not be executed.

An Alien Enemy committing a hostile act, dealt with as an Enemy; an Alien amy committing any Treason a Traytor within the Law.

2. The Statute of 25 E. 3. reduced and settled all Treasons; and that means all Treasons that were before

ore are reduced, and the Stat. of Ma. c. 1. reinforced the Statute E. 3. and reduced all new Treasons unto the old Standard of 25 E. and so all new Treasons declared between 25 E. 3. and 1 Ma. abrogated.

All Treason includes Felony; C. Pl. 15, before if the Indictment want ditorie, a Pardon of all Felonies charges it.

Now concerning *the kinds of High Treason.*

i. *Compassing* and imagining the death of the King, Queen, or Prince, declaring the same by some open

II. What (is) a *Compassing* the death?

Declaring by an open act a design to Depose or Imprison the King, an Overt act to manifest a compassing of His Death.

Calculating Nativity *de Roy nemy* compassing.

II. What a King?

i. A King before his Coronation, a King

High Treason.

a King within this Statute when the Crown descends upon him.

2. A King *de facto*, and not *de jure*, a King within this Act, and Treason against him punishable though the right Heir get the Crown.

3. A Titular King, that is no Regnant; as the Husband of the Queen regnant, not a King within the Act. V. 1 & 2 Ph. & Ma. c. 10 but the Queen is.

4. The right Heir to the Crown yet not in Possession thereof is no King within the Act.

III. What the *King's Wife*?
It extends not to a Queen Dowager.

IV. What the *eldest Son and Heir* of the King within the Act?

The second Son, after the death of the eldest, within the Statute.

The eldest Son of a Queen Regnant within the Statute.

The Collateral Heir apparent, as Roger Mortimer 11 R. 2. the Duke of York 39 H. 6. not Son and Heir within this Act.

V. What

7. What an *Overt act* requisite
to make such compassing Treason?

An Overt act must be alledged
in every such Indictment, and pro-

2. Compassing by bare words is
not an Overt act, as appears by many
contemporary Statutes against it: 26 H.
8. 13. 1 El. c. 6. 13 E!. c. 1. 14 El.
15. &c. but the same set down by
them in writing is an Overt act.

3. Conspiring the death of the
King, and providing weapons to ef-
fect it, or sending Letters to second
the assembling People to take the
King into their power; Lord Cob-
ham's Case; writing Letters to a
foreign Prince inciting to Invasion;
an Overt act.

4. Conspiring to levy War no
overt act unless levied, because it
relates to a distinct Treason.

II. Treason *levying War* against
the King.

1. A conspiring or compassing to
levy War, without a War *de facto*,
no Treason; but if a War levied,
the Conspirators Traytors as well
as

17 is not Law
as Held in
at K-9 ~
Gordon : Bk.
much 2 Georg

High Treason.

as the Actors: This appears by the Stat. 13 El. c. 1. that made such Conspiracy to levy War Treason during the Queens life.

2. A raising a Force to burn or throw down a particular Inclosure only a Riot; but if it had been to go from Town to Town, and cast all Inclosures, Bradshaw's Case; or change Religion, or to inhaunce the Salaries of Labourers, a levying War, because the End publique.

3. Joyning with Rebels *pro tempore mortis, & recesserunt quam cito poterunt*, no levying War. Oldcastle's Case.

4. Holding a Fort or Castle against the King's Force a levying War.

III. Treason Adhering to the King's Enemies, giving them Aid within the Land and without.

1. What *Adhering*?

1. Giving Aid and Comfort to them.

2. Surrender the King's Castle for reward.

2. Wh

2. What an *Enemy*?

The Subject of the King being a Rebel, he that out of the same succours him, this not amounting to an Enemy within this use.

An Enemy coming hostilely into *England*, shall be dealt with as an Enemy, executed by Marshal law, or ransomed; but a Subject assisting him shall be dealt with as a Partner.

3. The *Scots* invading *England* in the Queens time adjudged Enemies, though *Scotland* then in Amity. *Lord Herri's Case.*

3. Within the Land or without, how that Foreign Treason shall be tried.

1. At Common Law for a Foreign Treason the Indictment and Trial must be where the Land lies.

2. By the Stat. 35 H. 8. c. 2. Dy. 298. which is yet in Force it may be inquired of and tried in *B. R.* or by Commission in any County where

High Treason.

where the King appoints
the King's Signature may
be either to the Commission
or the Warrant thereof.

Treason done in *Ireland* is within
that Statute, *Perrot's Case*.

Trot. Ab.
p. 382.

3. By the Stat. 28 H.8.c.15. Tre-
son upon the Sea inquirable and tri-
able by Commission in any Court.
at Civil Law it must be before Lord
Admiral.

IV. Treason, *Violation of*

1. The King's Wife extends not
to a Dowager.

§. If the consent 'tis Treason
her.

2. The Prince's Wife.

§. The same Law as before.

3. The King's eldest Daughter
then living.

Thus far of Treasons that relate
to the King's Person and nearest Rela-
tions, wherein generally

1. There must be an Overt act
manifest that Offence.

2. That must be made appear-
manifest proof, and not by con-
jectures.

3.

3. He must be lawfully attaint
ereof, either by Confession or by
Peers in his life time.

And therefore if a Person be slain
open War he forfeits nothing, nei-
ther can he be attaint in such case,
t by Parliament.

2. Thus far of Treasons relating
the King immediately ; now fol-
ws that which is *Interpretative
eason.*

§ *Killing the Chancellor, Treas-
urer, Justice of one Bench or other,
stice in Eyre, or of Assise, or Oyer
d Terminer in their place, doing
eir Offices.*

1. This *extends* but to the Per-
sons here named, not to the Lord
Reward, Constable, or Marshal, or
ords of Parliament.

2. It extends to these only doing
eir Office.

3. It extends only to a killing, not
wounding without death.

But by Stat. 3 H. 7. c. 14. com-
ring to kill the King, or any of
s Council made Felony.

High Treason.

3. Counterfeiting the Great Seal or Privy Seal.

1. It must be an actual counterfeiting: therefore compassing to do it no Treason.
2. Affixing the Great Seal by the Chancellor without Warrant no Treason.
3. Fixing a true Great Seal to another Patent is a great Misprision, but not Treason; nor a Counterfeiting within this Statute, 2 H.

4. 25.

4. Aiders and Consenters to such Counterfeiting are within this Act.
5. The Counterfeiting of the Privy Signet or Sign Manual not Treason within this Act, but made so by the Statute of 1 & 2 P. R. c. II.

V. Tra

V. Treason concerning the *Coin*.

I. Counterfeiting the Kings Coin.

This was Treason at Common Law, but yet the Judgment was only as in the case of Petit Treason: and this because it was but affirmation of the Common Law.

Vide Si Mr. de
Mint fait de
memi allay,
&c. est Tre-
son. 3 H. 7. 20.

But whereas Clipping, &c. is made High Treason by subsequent Statutes, the Judgment is to be hang'd, drawn, and quartered, because it is contrary to new Law.

Herein considerable.

II. What shall be a Counterfeiting? Clipping, Washing, and Filing of Money for lucre or gain, any of the Copper money of the Realm, or of any other Realms, allowed to be current by Proclamation, not Within this Statute, but made High Treason by Stat. 5 El. c. 11. but no Interruption of blood or loss of power.

Impairing, Diminishing, Falsifying, scaling or lightening the proper money of this Realm, or the money of any other Realm

C 2 made

High Treason.

made currant by Proclamation, the Counsellors, Consenters, and Aiders within neither of the former, but made Treason by the Stat. of 18 Eliz. 1. but without corruption of Blood or loss of Dower.

2. What his Money?

This extended only to the proper Money of this Realm:

But now,

I Ma. c.6. Forging or Counterfeiting Money made currant by Proclamation, High Treason.

14 El. c. 3. Forging of Foreign Coin *not currant here*; Misprision of Treason in the Forgers, the Aiders and Abettors.

And Note, the bare forging of the King's Coin, without uttering, is Treason
6 H. 7. 13.

Mes uttering de faux money fa deins le Realm sciant ceo destrefals e solment Misprision de Treason, 3 H. 7. 19. Iffint Receaving, Aiding, & cestuy que ad counterfeit, Dy. 296.

Nota

*Nota, Est grand Misprision, mes
my Misprision de Treason, & issint
olue 1661.*

2. The second Offence concerning Money declared Treason is, if any Person *bringing into the Realm* Counterfeit Money.

1. It must be Counterfeit.
2. Counterfeit to the similitude English Money.

3. Brought from a Forreign realm, and therefore not from Ireland barely.

4. Brought knowingly.
5. Brought in, and not barely entered here : But if false or clipt money be found in his hands, by the Statute *De Moneta* if he be suspicious, he may be arrested till he have found his Warrant.

6. He must merchandize therewith, or make payment thereof.

certain High Treason made by subsequent Statutes in force.

5 El. c. 1. Refusing Oath of Supremacy upon the second tender Treason, without corruption of Blood.

High Treason.

Extolling power of Bishop
Rome Premunire, 13 El. c. 2. Br
 in Bulls, or putting in execution,
 reconciling to the See of Ra
 thereby, Treason.

Bringing in *Agnus Dei*, &c. Pa
 munire, 1 El. c. 1. V. Dy. 282.

§. 23 El. c. 1. Absolving Subje
 from Obedience, or reconciling the
 to Obedience of *Rome*: Treason
 Reconciler and Reconciled.

§. 27 El. 2. Priest coming in
 the Realm, not submitting in two
 days, Treason. The like for Eng
 in Foreign Seminaries.

Petty Treason.

S confined by Stat. 25 E. 3. to
three *Particulars*:

1. Where a *Servant kills his Master.*

This extends to some other Cases:

1. *Servant kills his Mistress.*
2. *Servant kills his Master's Wife.*
3. Where a *Servant, upon Malice taken during his Service, kills his Master after departure from his Service.*

2. *Wife killing her Husband.*

If the Wife and a Stranger kill the Husband; petty Treason in the Wife, Murder in the Stranger.

If the Wife or Servant procure a Stranger to kill her Husband or Master, the Procurer accessory only to Murder:

Petty Treason.

der: But if she procure her Servant to do it, Treason is in both.

3. *Ecclesiastical Person, Secular Regular, kills Superior.*

Note, Aiders, and Abettors, and Procurers to Petty Treason are within this Act.

V. C. P. 20.
Crom. 18. Dal.
c. 91. H. 5. Car.
Doddington's
Case.

This Act not taken by Equity. Yet Son kills Father or Mother it is Petit Treason, receiving Money, Drink, or Wages.

The *Judgment* in Petty Treason for a Man to be hang'd and drawn.

A Woman to be burnt.

Whatsoever will make a Master guilty or principal in Murder, will make a man guilty or principal in Petit Treason.

Pal. 1. 91.

But if the Servant kill the Master upon a sudden falling out, this is not Petit Treason, but Manslaughter.

Crom. 19.
Rigg's Case.

If the Servant or Wife be in Confederacy to kill the Husband or Master, and be in the same House, though not in the same Room, they are principals and guilty.

Petty Treason.

25

f Petit Treason, for it is a pre-
e.

servant the Mr. per procurement le
se absent : il est Petit Treason in
vant, & Accessory al Petit Treason
Feme. 2. Si Estr. fait ceo per pro-
ment Feme ou Servant : est Mur-
in l' Estr. & Accessory al Mur-
in Feme ou Servant. 3. Si Estr.
ceo per procurement & in presence
Feme ou Servant : est Pet. Treason
Feme ou Servant, & Murder in l'
r. Dy. 332. 254, 128.

Of

*Of Felonies : and I.
Felonies of the Death
a Man.*

THus far of High and Pe
Treason.

Now for Felonies, they are
ther : by Common Law, by S
tute.

Felonies *by Common Law* :
they are of four *kinds* :

1. Such as are committed agai
the Life.

2. Such as are against the Goo
of a Man.

3. Such as are against the Ha
tation of a Man.

4. Such as are against the Pr
tection of Publique Justice.

Felonies committed *against*
Life of two Natures.

1. That which is committed
gainst his own Life, *Felo de se*.

2. Committed against another
Life :

1. Involuntary.

Felonies.

bz

1. *Per infortunium*, and there-
in of *Deodands*.

2. *Per necessitatem*.

In defence of Justice.

In defence of self.

2. Voluntary, without Malice.

With Malice.

Felo

Felo De Se.

1. **T**he Person.

1. As in other Felonies in this, the Person commits it must be age of discretion, *Compos mentis*; otherwise no Forfeiture. Therefore if a Lunatick, during his Lunacy, a Man distract by force of Disease, or *Non compos*, kill himself, no Felony.

2. As in other Felonies death must ensue within a year and a day after the stroke, &c.

2. The *Act* may be voluntary. Involuntary in some cases.

If A. assault B. and B. falling down with his knife drawn, A. in pursuit to kill B. by haste falleth upon the knife, A. is *Felo de se*, and forfeits his Goods.

But if *B.* were standing in his *De-^{C.P.C. p. 54.}*
ce with his knife drawn, *A.* runs
upon the Weapon and kills himself,
is not *Felo de se.*

3. *The Conviction.*

1. If the Body can be seen, then the Conviction before *Coroner, super visum corporis,* and not traversable.
2. If not seen, then before the *C.P.C. 55;* Justices of the Peace, and then traversable by the Executor or Administrator.

In the same manner, if enquired *B.R.* in same County, traversa-

4. *The Forfeiture:*

1. When? By the Conviction.
2. How relating? To the stroke.

Therefore, Villain gives himself a mortal stroke; Lord seifeth goods; Villain dies; King shall have them.

3. Of what?

Joint things intire, all forfeited, *C.P.C. 55;* less in case of Merchants.

Joint things severable, Moiety forfeit.

But

But Joint Chattels in Husband
and Wife, all Forfeit for this Offense of Husband.

Chancemedia

Chancemedley.

Elony for the death of another, either involuntary, or voluntary.

Involuntary *per infortunium* ;
Ex necessitate.

Involuntary *per infortunium.*

Chancemedley, where a Man doth a lawful act, without intent of hurt to another, and death casually ensues :

As, shooting at Rovers, or at a Bird, or hewing a Tree and the Hatchet-head flies off.

A School-master in reasonable manner beating a Scholar, or Father his Son, or Master his Servant.

Doing a lawful thing that may breed danger, and giving warning ; as stinging by command of the Prince.

But if the act be unlawful, then death ensuing Manslaughter or Murder.

Shooting at a Deer in another's Park, the Arrow glanceth and killeth a stander by, Manslaughter.

Throw-

Chancemedley.

Throwing stones or shooting
the High-way, and death ensuin
Manslaughter.

C. P.C. 57.

But if a man , knowing people
passing by in the street, throw a stone
over the wall, Murder.

Palt. c. 96.

Playing at Hand-sword without
command of the King, death ensuin,
Manslaughter.

So that an unlawful act, without
an ill intent, Manslaughter ; with
an ill intent, Murder.

St. PC. c. 15.

And this causeth forfeiture
Goods ; but a Pardon of Course
upon the Special matter found.

Deodand

Deodand.

¶ Ut there is a death *per infortunium* without the default procurement of another : fall from a Tree, or by a Horse or Cart : ¶ there the thing that occasions death is Forfeited and *Deodand*: wherein considerable,

i. *What Forfeited* as a Deodand.

i. If a man fall from a Cart, or C.P.C. 58: from a Ship in Fresh-water, it is a Deodand; otherwise in Salt-wa-

2. If an Infant under fourteen slain by fall from a Cart, Horse, Mill, no Deodand; but if slain by a Horse, Ox, or Bull, then a Deodand.

3. If a man kill another with any Dalt. Inst. c. 97: sword, a Deodand.

2. *When forfeited, viz.*

When found by Inquisition, Dalt. c. 97: before the Jury ought to find

D the

the price ; and this is before Coroner.

3. The *Relation* of the Forfeiture is to the stroke.

Homicide

Homicide ex Necessitate.

His of several sorts :

1. In reference to justice.
2. In defence of his Person, House, Goods.

Homicide ex necessitate.

§. 1. *In reference to justice*, of several kinds :

1. In execution of Justice.
2. In advancement of justice.

Homicide in Execution of Justice requires certain Prescripts.

1. That the Judgment be given by one that hath Jurisdiction in the cause.

If a Justice of Peace give Judgment in Treason, the Execution whereof Murder in Judge and Officer.

But if he give Judgment of death for Trespass, Felony in the Judge, but not in the Officer that executes

2. That it be done by a lawful Officer.

Therefore if a Stranger of his own

Homicide ex Necessitate.

own head, or the Judge that gives the Judgment, Execute it, where it is to be done by the Sheriff, Felony.

3. That it be done pursuant to the Judgment.

St. PC. c. 4.

Judgment to be hang'd, Sheriff beheads him, Felony.

2. Homicide *in advancement of Justice* in Causes.

Criminal.

.

Civil.

1. In Causes *Criminal*.

If a Sheriff or Bailiff, having warrant to arrest a Person indicted of Felony, and he will not obey, or suffer himself to be arrested, the Bailiff kills him, no Felony.

Dal. c. 98.

Cro. fo. 27.

The same if any Person that pursues upon Hue-and-Cry, or otherwise to arrest a Felon that flies.

C. PC. 221.

If a Felon arrested break away from his Conductors to Goal, they may kill him, if they cannot otherwise take him.

But in this latter Case there must be a Felony done.

If a Prisoner assaults his Gaoler, and he kill the Prisoner, no Felony.

Rioters or forcible Enterers or Detainors, standing in opposition to the Justice's lawful warrant, and one of them slain, no Felony.

Keeper or Parker may kill Hun- Cr. f. 28;
ters, if they fly or defend themselves.

Champion in bēe de dēt, ou
Combatant in Appelle, excuse in
killing the other.

2. In Civil Causes.

Though Sheriff cannot kill a man who flies from the execution of a Civil Process, yet if he resist the arrest, the Sheriff or his Officer need C. Pl. c. 56.
not give back, but may kill the Assailant.

§. So if in the arrest and striving together, the Officer kill him, no Felony.

Now touching all the former Homicides these *things observable*:

1. There must be no malice coloured under pretence of necessity; for if it be, it alters the Case, and makes it Murder.
2. The Party that did the Fact must be arraigned, and upon *No Guilty* pleaded, the Special Matter must be found.
3. Upon this Special Matter thus found, the Party is to be dismissed without any forfeiture or pardon purchased.

2. Thus

THUS of Homicide *ex necessitate* in reference to Public Justice: Others there are that are grounded upon *Private Interest*, and they of two kinds:

1. *Justifiable*, and consequently inducing no forfeiture at all, nor needing pardon.

2. *Excusable*, and yet inducing a forfeiture.

1. *Justifiable* and inducing no forfeiture, where a Person comes to commit a known Felony.

1. If a man come to burn my Dal. c. 98. House, and I shoot out of my House, or issue out of my House, and kill him, no Felony.

2. If a Woman kill him that assaulteth to ravish her, no Felony.

3. If Thieves assault me in the High-way, or in my House to rob me, and I, or my 24 H. 8. c. 5. Servant kill them, no Felony nor Forfeiture.

Homicide ex Necessitate.

But if the assault in my House were not to rob me, but to beat me, &c. there would be only *se defendendo*, and goods forfeited, and a Pardon of course to be granted, because (they) came not to commit a known Felony; for it cannot be judged whether he meant to kill me.

Dal. c. 98.

If one come to enter into my house, claiming Title, and I kill him, Manslaughter.

Crom. 24.

If *A.* enter wrongfully into the house of *B.* riotously and forcibly *B.* and others indeavour to fire the house, *A.* kills, Manslaughter.

Se defendendo.

Homicide *Excusable Se defendendo*, which though it save Life, yet the Goods are forfeit; this requires these things :

1. It must be an inevitable necessity.

In case of a justifiable Homicide, of a Thief that comes to rob me, by an Officer resisted in Executing an Arrest, the Party need not give back to the Wall. C. P. C. s. 56;

But in this Homicide *se defendendo*, the Party that is assaulted not excused, unless he give back to the Wall. C. P. C. 57.

But if the assault be so fierce, and such a place that giving back could endanger his life, then he need not give back. C. P. C. 57;

A man fights, and falls to the ground, then flying not necessarily.

2. It must be in his defence.

If A. be assaulted by B. and before a mortal wound given A. gives back C. P. C. 56;

Se Defendendo.

back till he come to the Wall, and then in his defence kills *B.* this is *Se defendendo.*

But if the mortal wound first given, then Manslaughter.

*N. c. 98.
tom. 26.*

If *A.* upon malice *præpense* strikes *B.* and then fly to the wall, and there in his own defence kills *B.* this is Murder.

But if there be malice between *A.* and *B.* and *A.* strike first, *B.* retreats to the wall, and in his own defence kill *A.* this is *Se defendendo.*

Crom. fol. 25. If malice be betwixt *A.* and *B.* and *A.* assaults *B.* *B.* retreats to the wall and then kills *A.* in his own defence if it be in the High-way he shall be discharged, but if not, yet it is *Se defendendo. Copston's Case.*

Murda

Murder.

Hus far of Homicide Involuntary:

Homicide *Voluntary* is either :

Ex malitia præcogitata, which is Murder.

Sine malitia, Manslaughter.

Murder is when a person killeth another of malice within any Country in *England*, so he die within a year and a day.

i. Who shall be said a *person killed*?

A man that is *Non compos* kills ~~any~~ other, this is no Felony.

§. The same for a Lunatick during his Lunacy.

But he that incites a *mad-man* to kill another is a principal Murderer.

A man *drunk* killeth another, this Felony.

An *Infant* within age of discretion kills a man, no Felony ; as if he nine or ten years old.

But if by circumstances it appear-
eth

Murder.

Crom. 27.

eth he could distinguish betw
Good and Evil, it is Felony: as
he hide the dead, make excuse
&c.

St. PC. c. 9.

But in such Cases Execution
prudence respited to obtain a P
don.

2. What said *Malice*?

It is either implied or expressed

Implied malice is collected either
from the manner of doing, or from
the person slain, or from the person
killing.

1. Malice implied *in the manner*
of doing.

Poysoning wilfully any man, if
plies malice.

C. PC. 52.

If a man do an act that apparently
must introduce harm, and does
ensue; as to run among a multitude
with a Horse used to strike.

Dal. c. 93.

But note, that if it were without
intention to do harm, then Murder
if without such intention, Manslaughter.

The like of throwing a stone
over a house among many people,
the intention of doing harm mak-

murder; want of such intention, or slaughter, because the act unlawful.

or an Intention of evil, though against a particular person, makes a malice.

Killing any person without provocation, Murder.

1. comes to rob *B. B.* resists and takes, *A.* kills him, Murder.

A. Distorts his mouth, and laughs ^{M. 42. 43 El.} *B.* who thereupon kills him, ^{Brame's Case.} Murder.

2. Malice implied *in respect of the son killed.*

If a Watchman or Constable, or any that comes in his assistance, doing their Office, be killed, it is Murder, though the killer knew not it to be such.

If any Magistrate or Minister of Justice, having a lawful Warrant, killed, doing his Office, it is Murder: As where a Serjeant comes to arrest,

1. Though in the Night.
2. Though on Sunday.
3. Though upon the Arrest he

Murder.

*9 Rep. Mack-
ally's Case.*

- he shew not out of wh
Court, or whose Suit.
- 4. Though the Process Em
neous.
- 5. Though he shew not b
Warrant or Mace where
is not demanded.

But if the Officer do what is
warrantable, as break open a w
dow to arrest, there though sl
Manslaughter only, *P. 15 Car. Co
Case.*

Malefactors come into a Park,
Parker shoots, they fly, he pursu
they kill him, Murder in all; f
their first entry was with a mali
ous intent. *M. 17 Jac. Usr
Case.*

3. Malice implied *in respect of*
person killing.

*A. assaults B. to rob him, B. resi
A. kills him, Murder.*

Prisoner by Dures of the Gaol
comes to an untimely end, Mu
der.

Executing Martial Law in time
Peace, Murder.

2. Malic

2. Malice *Express* considerable,
 1. In the principal in the first degree that doth the act.
 2. In the principal in the second degree, that is present and aiding, or abetting.
 3. In the Accessory before the Fact.

1. In the Principal in the first degree.

1. If a person have no particular malice against any special person, it comes with a general resolution against all Opposers, if the act be lawful, and death ensue, it is murder: As if it be to commit a Crom. 20. Riot, to enter into a Park, Lord *acre's* Case.

2. If there be malice between *A.* and *B.* and they meet and fight upon that malice, though *A.* gives first blow, yet if *B.* kill him, it is Mur- Crom. 21. der.

If there be malice between *A.* and *B.* and *A.* assault *B.* and after *A.* comes to the wall, and there in his own defence kill *B.* by some this is murder, but *Quare.* If

If there be quarrel between A and B. and A. challenge B. B. declines it, but at length upon importunity, and to vindicate his Reputation, meets and fights, and kills A. this is Murder, P. 14 *Jac. Taverner's Case.*

If A. and B. fall out upon a sudden, and they presently agree to fight, and each fetch a Weapon and go into the field, and one kills the other ; this is only Manslaughter, because the blood never cooled : but otherwise if they appoint to fight the next day.

C. PC. 57. 55.

Laurence Case. A. and B. fall out, A. saith he will not strike, but will give B. a pot of Ale to touch him, B. strikes A. kills him, Murder.

38 El.

If A. and B. are in malice, and challenge the field, and B. refuse to meet, but saith he shall go to morrow to such a Town, A. meets him and assaults him, and B. kills him, Manslaughter, and no Murder.

H. 9 *Jac. Rawley's Case.*

The Child of A. beats the Child of B. who runs home to his Father and he runs three quarters of a mile beat

slays the other Child, and he dies, manslaughter.

3. If malice be not *continuing* till death, no Murder.

A. and B. combat upon malice, and are pasted, and after they meet Cro. 21. and combat upon the sudden, and one kills the other, by some not murder, because the first Malice satisfied.

If the party killed had wounded the first combat the party slaying, were.

A. and B. are at malice, and reconciled, and after upon a new occasion fall out and kill, no Murder.

4. Though the malice did *not* rise so high as death, but intended only to beat the party, yet if malicious, it is Murder if death ensue.

A Keeper of Esterly Park finds a boy stealing wood, bound him to a Horse-tail and beat him, the horse ran away, kill'd the Child, Murder, for it was a deliberate act,
I. 4 Car. B. R. Holloway's Case.

Murder.

5. The malice intended to *egreditur personam*, and makes the death of another upon that malice Murder, and qualifies the act in the same manner, as if it had had its due effect.

Dy. 128.

Crom. 101.
Elly's Case.

9 Rep. Gore's
Case.

A. having malice at *B.* strikes him, and misl eth, and kills *C.* this murder in *A.* and if it had been without malice prepense, Manslaughter.

A. having malice to *B.* assault him, and kills the Servant of *B.* this is Murder in *A.*

A. lays poison to kill *B.* and at misadventure takes it and dies Murder in *A.* Contrary if it had been laid to kill *Rats*; then *infatuum.*

A. and *B.* combat upon malice, comes to part them, *A.* kills *C.* this is Murder, and *per asciens*, Murder in both; and if the falling out were sudden, then only Manslaughter in him that kill'd him. Vide Dyer 128 20 E. 3. Corone 262.

6. The malice must be of Corporal damage to the party.

2. Principals *in second degree*, that are aiding and abetting.

1. If two or more come together to kill, rob, or beat a man, or to commit a Riot, and one of them kills a man, this is murder in all them of that party that are present St. P. C. c. 40; aiding or abetting him thereunto, or that were ready to aid him, though but lookers on; otherwise if he came there by chance.

2. All are said to be present that are in the same House, though in another Room, or in the same Park, though half a mile distant, and out of view; therefore if they came to commit a Felony, such persons aiding or abetting shall be said present.

3. *A.* and *B.* fall out, and appoint the field; *A.* takes *C.* his Second, *B.* takes *D.* his Second; *A.* kills *B.* this is doubtless Murder in *C.* and it Dal. c. 93. hath been held Murder in *D.* also, Dy. 128. or it is a compact; but it seems otherwise.

4. If *A.* and *B.* having malice *repente* meet and fight, and *C.* the

Cron. 100. Servant of *A.* not acquainted therewith, take part with *A.* his Master, and kill *B.* this is Murder in *A.* but only Manslaughter in *C.*

The same Law if *C.* came in suddenly, and took part with *A.* and kill'd *B.* V. Sir *Ferdinando Cary's Case, 14 Jac.*

Mes si un vient la per chance, ou malette, nest principal, nec accessory al Manslaugher ou Murder, Stamp 40.

3. What malice in the Accessary before the Fact.

A. commands *B.* to kill *C.* with a Gun, he kills him with a Sword *A.* is accessory to this Murder, because the killing was the substance.

But if he command *B.* to kill *C.* and he by mistake kill *D.* this is Murder in *B.* but *A.* is not accessory thereunto.

A. commands *B.* to beat *C.* who beats him, whereof he dies, this is Murder in *B.* and *A.* is accessory because death ensues upon the command.

4. Wha

4. What *Killing*?

Prison, Weapon, Gun, Bow,
Crushing, Bruising, Smothering,
Strangling, Famishing, inciting
Dogs.

§. Laying a Sick man in the cold.

Laying an Infant in an Orchard under Leaves, and he stricken with a *Kite*.

A man keeps a Beast used to strike knowingly, and ties it not up, the Beast kills a man, Felony by some, by others not, but a great misdemeanour, 3 E. 3. Cor. 311.

5. What the *person killed*?

It must be a person *in rerum natura*.

If a Woman quick with Child take a potion to kill it, and accordingly it is destroyed without being born alive, a great misprision, but no Felony; but if born alive, and after dies of that potion, it is Murder.

The like if it dies of a stroke given by another in like manner.

§. Counsel before the birth to destroy it, and after the Child isborn

c. PC. c. 7.
Dal. c. 93.
contra.

E 3 de-

Ibid.

destroyed accordingly, the counsellor is accessary.

6. What a place *within the Realm*?

C. CP. c. 7.

Stroke and death *in partibus transmarinis* not punishable at Common Law, but before the Constable and Marshal.

Stroke and death upon the Sea inquirable before the Admiral, or according to the Stat. of 28 H. 8. c. 13. But stroke upon the Sea, and death within the Body of the County, not punishable at all.

If the stroke in one County, and the death in another, the party shall be indicted where the death hapned.

An accessary in the County of A. to a Felony committed in the County of B. the accessary after Certificate of the Conviction and Attainder of the principal, may be Arraigned upon an Indictment in the County of A. where he was accessary. Stat. 2 E. 6. c. 24. V. *Formam Processus inde in B.R.C. PC. cap. 7. Overburie's Case.*

7. The

7. The party must die *within the year and the day* of that stroke, or poison, &c.

E 4 *Manslaughter.*

Manslaughter.

KI L L I N G another upon sudden falling out, or provocation, or unjustifiable act, Manslaughter.

1. What a *sudden falling out*?

Two combat and part, and presently come together and fight, or one presently fetcheth a Weapon and killeth the other, or they presently fetch their Weapons, and go into the field, and one kills the other. Manslaughter.

C.P.C.c. 8. Diverse Rioters enter into anothers house forcibly, and eject the people; afterwards they being in possession, the party ejected, with twenty more, come in the night to the house, endeavour to fire it, and one within shoots and kills one of the assailants; ruled to be Manslaughter, because their entry and holding with force illegal, and not Murder, because a sudden provocation.

So *A.* claims title to the house of *A.* attempts to enter and shoots the house; *B.* shoots out and is *A.* adjudged Manslaughter.

Two fall out and fight, and one Dal. c. 94. breaks his Sword; a stranger standing by sends him another, and he kills therewith, Manslaughter in th.

2. What a *sudden provocation*?

Two strive for the wall, and one kills the other, Manslaughter.

3. What *unlawful act*, whereupon death ensuing will make Manslaughter?

If the unlawful act be deliberate, and tend to the personal hurt of a man immediately, or by way of necessary consequence, death ensuing, Murder.

But if either such deliberation or intent of personal hurt be wanting, Manslaughter.

Two play at Foils, and one kills the other, Manslaughter. Sir John bichester's Case, 11 H. 7. 23. V. Cell. 108. 136. Wrasling, & un tu autre.

A man throws a stone at another which glanceth and killeth another Manslaughter; and not Murder because no malitious intent to hurt not *per infortunium*, because doing an unlawful act.

There is a particular Manslaughter, wherein Clergy is oust, by the Stat. 1 Jac. c. 8. wherein.

1. He that is ousted of Clergy by that Statute, must be especially Indicted pursuant to the Statute.

2. It extends to him that actually gave the stroke, not to those that are present.

3. Need not Conclude *contraformam Statuti.*

4. Although the Indictment be special upon the Statute, yet the Jury may find general Manslaughter. H. 23 Car. B. R. Page's Case.

A Newgat rep. 16 Car. 2. A man whips his horse in the street to make him run speedily, and the horse runs over a Child, and kills him; Manslaughter: But another whips the horse, whereby he springs out, and runs over a Child, and kills him;

Infortunium. Nota, Indictment
Murder per ceo que est per infor-
sur non cul. pled, Jury poet trover
non cul. si soit Coroners Inquest que
ceo per misfortune & le party
est ceo. Prettye's Case.

Larceny.

Larceny.

WE come to Offences Capital which refer to the Goods of any Person, viz. *Larceny*, which is of two kinds;

{ Simple Larceny,

{ Mixt and complexed Larceny

Simple Larceny of two kinds:
Grand Larceny, of the value
12 pence.

Petit Larceny, under that
value.

Simple Larceny, a felonious
fraudulent taking away by any per-
son of the meer personal goods
of another, not from the person,
out of his house, to the value
12 pence.

I. W.

What shall be said a *Felonious taking?* Imports two things:

A taking necessary; the Intent must be *Cepit*; if it be *sece Abduxit Equum*, not sufficient.

If a person find goods lost, and revert them, though the conver- C.P.C. 108.
n were *animo furandi*; yet no Felony.

If a man hath a *bare charge* of goods, Felony may be by him committed: As a Butler that hath charge of Plate; Shepherd of Sheep; the Servant of him that hath a *bare special charge*, as the Guest that hath Plate set before him.

But he that hath a *possession* by livery cannot thereof commit Felony.

A Carrier hath goods delivered into his hands, and he carries them away, *not* Felony.

A. lendeth his Horse to a Stranger, who rides away, no Felony.

A Clothier delivers Yarn to a Weaver

*N.B. 4. Person in
Delivery must
be going from
one Person who
hath such Person
in his Power
to another Person
to whom he
delivers the same.
e.g.: 1. if Loder
delivers any Goods
to a Weaver.
it is Felony.*

Larceny.

Weaver to weave, he carries it away or imbezels it, no Felony.

But this hath two Exceptions:

1. If the privity be determin'd then it may be Felony.

A. delivers a Pack or a Tun of Wine to a Carrier, he opens it, and takes out Goods or Wine, *animo furandi*, Felony.

So if *A.* deliver goods to *B.* to carry to a certain place, he carries it to the place appointed, and after takes it *animo furandi*; Felony.

2. By Stat. 21 H. 8. c. 7. whereby if a Servant goes away with the goods of his Master delivered to him above the value of 40 shilling herein

1. Extends not to Apprentices nor Servants within eighteen years.

2. Requires a Delivery. If one Servant deliver the goods to the other, this is delivery by Master.

If the Master deliver an Obligation, or deliver Cattel to sell, and the Servant receive the money and depart with it, it is no Felony; the like if he had gone away with the Obligation.

3. He must go away with it.

Wantfully consuming, &c. therefore, no Felony.

4. Now by the Stat. of 1 E.6.

c. 12. he may have his Clergy.

5. He must be a Servant at the time of the delivery, and going away; therefore for imbezelling after Master's death, Stat. 33 H. 6. c. 1. gives remedy.

6. If a Servant receive his Masters Rents, and go away with them, not within the Statute.

If a man, seeing a Horse in the C.P.C. 47 pasture of the Owner, having a mind to steal him, obtains a Relevin, and thereby hath the Horse delivered, this a Felonious taking.

If

Larceny.

If A. feloniously take my Horse and B. feloniously takes him from him, B. may be appealed or indicted as of a felonious taking from me.

§. Stat. 33 H. 8. c. 1. False taken.

Un prist feme de I. S. oue ses biens contre le volunt, est Felony : Contre si feme prist les biens le baron & autre estr. de sa bone volont. 13 Ass. 5. Issint si feme covert prist biens le baron, ou eux dona al estr. que eux import, nest Felony. Abridg. Ass. 63.

II. What a carrying away?

A Guest takes sheets out of the Bed, brings them into the Hall with an intent to carry them away, but is apprehended before this ; a carrying away.

A. takes the Horse of B. with intent to steal him, but is apprehended before he can get out of the Pasture ; this taking away.

A. kills my sheep, strips them, carries away their skins, Felony ; so he pull off their wooll.

III. B.

III. *By whom?* and who such a person as may commit Larceny?

An *Infant* under fourteen years Dal. 104.
may commit Larceny; but prudence to respite Judgment; yet one under fourteen burnt in the hand. residents.

A *Feme covert* by her own act may commit Larceny, and in such case the husband may be Accessary to the wife in receiving her; but *t e converso*.

But she cannot feloniously take her husband's goods; and though she so take her husbands goods, and deliver them to a stranger, yet no felony in the stranger.

If husband and wife do both a Dal. 104.
felony, this is felony in both, and ~~felony in both~~
both arraigned for it.

Nota, Books old and latter, and
actise, *contrad.*

If the wife commits murder by
excision of her husband, murder
both; but if theft, no Felony in
felony in both
contrad. &c
wife, Dignity
with her husband.

F her;

Larceny.

her ; but a bare Command excuseth her not.

But if a *Servant* commit theft by coercion of his Master, yet it is Felony.

IV. What meer personal Goods;

Pal. c. 47.

1. If they are in the realty, or annexed thereunto , no Larceny: As Corn or Gras growing, Apples on Trees.

§. Stealing a Chest of Charters, no Felony, though the Chest above value.

Taking Lead off a Church no Felony ; otherwise if he leave it a while, and after come and take it.

Taking an Infant Ward no Felony.

2. If they are of a base Nature as Mastiffs , Dogs , Bears , Foxes , Monkeys , Ferrets , or their Whelps ; there can be no Felony of them ; but of Hawks reclaimed Felony may be.

V. What Felonies

V. What said the *Goods of another.*

i. He that hath a special property, as a Bailiff, &c. they are his goods *pro tempore*. A. bails goods to B. and after to the intent to charge B. steals them from him, Felony in A. 21 H. 7. Kel. 70. Cloth in maines Taylor.

2. He that takes the goods of a
Chappel in time of vacation, in-
dictable *quare bona Capelle*; so *bona*^{Dcl. 103.}
Parochianorum, bona mortui, or bona
ignoti, &c. *July 19 10: Mchtr' for Tn 1500.*

So to steal the shroud off a person buried; and it shall be *bona exequitorum*. V. *Tamen contra*, 15 Jac. *Nottingham's Case*.

But taking of Treasure trove,
Wrecks, Waifs and Strays before
seizure, no Felony.

Taking an Obligation Felony, *in action* *Kain*
because in action. *present* *Felony*

Taking fish in a River no Felony, ~~will~~^{is} ~~Class 7~~
but fish in a Net, Trunk, or Pond, ~~is~~^{not} ~~Value~~
Felony, because not at their natural

liberty: So of old Pigeons out of the house.

Where a man hath a property only *ratione loci*, or *privilegii*, in things *feræ naturæ*, as Coneyes or Deer in my Ground, Park, or Warren, no Felony.

But if reduced to tameness, and fit for food, as Deer, Coneyes, Cranes, Partridge, Pheasants, he that stealeth them, knowing them tame, committeth Felony.

So of Swans marked and pinioned, or Swans unmarked if tame, kept in a Mote, Pond, or private River.

Where a man hath a property *ratione impotentiae* in things wild by nature, as young Hawks in the nest, young Pigeons in the nest, Felony thereof.

Taking of Eggs of Hawk or Swan out of the ground of another, no Felony, but punishable by Statute.

But taking any thing *domitæ naturæ*, as Duck, Hen, Geese, Turkeys, Peacocks, or their Eggs; or Dome-

stick

of
tack beasts, as Horses, Mares, Colts,
&c. or their young, Felony.

VI. Where this shall be said a
felonious taking.

If A. steal goods in the County of B. and carry them into the County of C. he may be appealed or indicted in the County of C. for Larceny, but can be indicted of Robbery only in the County of B. only in the former case the Stat. of 25 H. 8. c. 1. ousts them of their Clergy, if they were not to have had Clergy if arraigned in the County of B. where the Robbery committed.

Si guest prist sheets hors de leict feloniously, & eux import in hale, & la sur fear de pursuit relinquish eux, Felony. 27 Ass. 39.

VII. Of the *value* of twelve pence or above.

1. *Nota,* That in case of Grand larceny it must be above the value of twelve pence ; and if it be but

Larceny.

of the value of twelve pence, or under, it is Petit Larceny.

2. If two steal goods to the value of thirteen pence, this is grand Larceny in both.

3. If one person at several times, at one time steal four pence, at another six pence, at another three pence, in all amounting to above twelve pence, from the same person, all these put together in one Indictment, amount to grand Larceny; and Judgment of death.

4. If a man be indicted of stealing goods to the value of ten shillings, and the Jurors find specially, as they may, the value but ten pence, 'tis but petty Larceny, and no Judgment of Death.

C. PC 218.
Brook: Corne
No 2: 222
to this —

And note, petty Larceny is Felony, though not of death; and for this he shall forfeit Goods, and be subject to whipping or other Corporal punishment. *Issint si fugam fecit furt biens.* Coron. 106.

Robbery.

Complicated or mixt Larceny, which hath a further degree of guilt in it.

1. For that it is a taking from the person.
2. For that it is a taking out of the house.

1. Taking from the person.

1. Where the person is put in fear, and then 'tis Robbery.
2. When not put in fear, and then 'tis Larceny from the person.

Robbery is a felonious and violent taking away from the person of another money or goods to any value, putting him in fear.

1. *Violent and putting him in fear;* the words of the Indictment run, *violenter & felonice*, and that distinguishes him from a Cut-purse.

2. Taking away.

1. An assault to rob without any taken, is no Felony.

Robbery.

If a Thief, with or without weapon drawn, bid the party deliver his Purse, and he doth it, this is a taking to make it Robbery.

Crom. 31.

If a Thief command to deliver his purse, and he deliver, and the Thief finding little in it, deliver it back, this is Robbery.

C. CP. c. 16.

If a Thief compel the true man by fear to swear to fetch him a sum of meney, which he doth accordingly, and the Thief receives it, it is Robbery.

If the true man's purse be fastned to his girdle, the Thief cuts the girdle, the purse falls to the ground, no Robbery; but if the Thief take up the purse, though he let it fall again, Robbery, though he never take it up more.

All that come in company to rob Principals, though one only actually do it.

Crom. 34.

A. B. and C. assault D. to rob him in the High-way, but rob him not, for that he escaped: A. rides from the rest, in the same High-way, and robs E. cut of view of the rest, and came

Robbery.

me back to the rest, and for this
and C. arraigned and hanged,
ough assented not, because they
came to the end to rob. *Pudsey's*
ase.

3. Taking from the person.

If the true man, seeking to escape,
st his Purse into a Bush, or let fall
s Hat, if the Thief take it, Rob-
bery.

Taking a thing in the presence
in law a taking from the person.

If one take or drive my Cattel Dal. c. 107.
ut of my Pasture in my presence,
his is Robbery, if he make an assault
pon me, or put me in fear.

But if he take any thing from my Dal. ibid.
erson, without putting me in fear Dy. 224.
y assault or violence, no Robbery;
nd the Indictment runs that he took
t from the person violently and fe-
niously, putting him in fear. Dal. ibid.

4. Of what value soever.

Though under twelve pence. C. PC. c. 16.
Mes in foren County in tiel case Pe-
tit. Larceny, car n'est Robbery la.
Jac. Moor's Rep.

Now though Robbery and sim-
ple

Robbery.

ple Larceny are both Capital, yet they differ in these Respects :

1. The Principal and Accessary before are ousted of Clergy, but not in simple Larceny.

§. Stat. 23 H. 8. c. 1. 1 E. 6. 11

25 H. 8. 3. 4 & 5 Phil. & Ma. c. 4
Nota, speaks of Robbery in or near the High-way.

2. In the form of the Indictment :

An Indictment of Robbery supposeth an assault, beating and wounding, and taking from the person felonice ; or at least assault and putting in fear, felonice & violenter cepit a persona : Other Indictments, though of a taking from the person, yet not violenter.

3. In case of other thefts, though from the person, not felony of death unless it exceed twelve pence : But here it is Felony of death if never so small.

Larceny from the Person.

Arceny from the person *without putting in fear*; which may be either by picking the pocket, or cutting the Purse, which is supposed to be done *clam & secrete a persona*.

In this Case by the Stat. of 8 El.

4. If the Indictment pursue the Statute, which is secretly without the knowledge of the party, *clam & secrete*, he is ousted of his Clergy.

But if it be under value of twelve C.P.C. a. 84.
Pence, then it remains petty Larceny, as before; for the Statute did not alter the Offence, though it took a Priviledge.

Larceny from the person, which neither *clam & secrete a persona*, nor with putting in terror, nor so laid in the Indictment, nor so found by the Jury, Clergy. Dyer 224.

7 Jac. Harman's Case.

Larceny

Larceny from the House.

Larceny receives another aggravation when it is taken from the Habitation of a man.

Per Stat. 23 H.
S. c. 1.

Robbing any person in the dwelling-house, the owner, his wife or children, or servants being within, and put in fear, ousted of Clergy in case of Conviction, together with Accessories before, by Stat. 23 H.

c. 1.

Felonious taking of goods to the value of five shillings out of any dwelling-house or out-house, though no person within, oust of Clergy, by 39 El. c. 15.

These have a mark upon them as Larcenies complicated, and so oust of Clergy. V. Infra Clergy.

Kelvyn: 63: NB: 23 H. c. 1: c. 6: & Sol: 6: c. 9:
made to enlarge; 23 H. c. 1: extended only to
Robbery of House: when Person put in fear:
39 Eliz: c. 10: related to Robbing but Piracy
alone Person not put in fear; if
further above 10: c. 10: 10: & 11: v: 1:
leads to shelter out of Ships: etc:
Kelvyn: 69: Breaking a Chamber or Roptoard fit for
Robbery: 12m. for

Piracy.

O this we may add Piracy and Depredation upon the Sea.

This at Common Law conceived C.P.C.c. 49.
is Treason, if done by a Subject.

But this alter'd by Stat. 25 Ed. 3.
Since that Statute an offence triable by the Civil Law till 28 H. 8.

The Stat. 28 H. 8. alters not the offence; but it remains only an offence by the Civil Law: and therefore a pardon of all Felonies doth not discharge it: but it gives a trial by the course of Common Law:

I. It extends not to the Accessaries: but if the Accessary were abroad, triable by the Civil Law; if abroad, by no Law: for Stat. 2, 3 E.6. extends not to it.

2. It extends not to Offences in Creeks or Ports within the Body of County, because punishable by the Common Law.

3. Though

Piracy.

3. Though it give forfeiture
Life, Lands, and Goods, yet no Co-
ruption of Blood.

4. *Paine fort & dure* in case
standing mute.

Burglary

Burglary.

Burglary: 67.
Burglary: 10.
Person in & house.

WE come to the offences ~~Burglary~~ ^{against the dwelling or man's abitation;} and that of two kinds ~~c. Lates.~~

I. Burglary.

2. Arson, or Burning.

Burglary by the Common Law is, ^{12 Anne: c. 7:} where a person in the night time ^{Breaking and} breaketh and entreth into the Man-^{or} ~~house~~ in-
on-House of another, to the intent ^{at} ~~in~~ Right time
to commit some Felony within the ^{is guilty of Bur}ame, whether the felonious intent ^{glary}
be executed or not.

Burglary

I. What shall be said *in the Night?*

By some after Sun-set and before Sun-rising it is night. *Dal. c. 99.*

But it seems that so long as the Countenance of a person may be *C. P. C. c. 14.* discerned it is day. *Coron. 293.*

II. What

Burglary.

II. What *Breaking* and *Entring*?

The Entring into a house by the doors open is a Breaking in Law, but here not sufficient without an actual breaking: Therefore if the door be open, or window be open and the Thief draw out Goods thereby, no Burglary.

But if the Thief break the window, draw the latch, unlock the door, break a hole in the wall, these are Breaking.

And as there must be a Breaking so there must be an Entry:

Setting the foot over the threshold;

§. Putting the hand, or a hook, or a pistol, within the window, or door;

Turning the key where the door is locked on the inside;

§. An Entry.

In some cases Burglary without actual breaking.

Divers

Divers come to commit Burglary,
and one does it, the rest watch at
the Lanes end, Burglary in all.

A Thief goes down a Chimney Crom. 30.
to rob, Burglary.

Thieves having an intent to rob,
raise Hue-and Cry, and bring the
Constable, to whom the owner C. PC. 14.
opens the door, and when they come
in, they bind the Constable and rob
the owner, Burglary.

A Thief assaults the house, the
owner for fear throws out his mo-
ney, it seems not Burglary, but only
Robbery.

A Thief gets in by the doors open Dal. 99.
in the day, lies there till night, then
robs and goes away; no Burglary :
But if he break open the door to go
out, Burglary.

The Servant opens the window Dal. ubi supra.
to let in a Thief, who comes in and
steals, Burglary in the Stranger, but
Robbery in the Servant.

If A. enter into the Hall by the
doors open, the owner retires to a
Chamber, and there A. breaks in,
this a Breaking and Entring.

If Thieves enter into a house through a hole made there before no Burglary.

A. lies in one part of the House
B. his servant in another, between them a Stair-foot-door latched, the servant in the night draws the latch and enters his Masters Chamber to murder him, Burglary.

Trin. 16 Jac. *Edmond's Case.*

III. What Mansion House?

Keeling: 15: 85: The Church a Mansion House within the Law.

§. The Out-buildings, as Barns, Stables, are parcel of the Mansion house, and Burglary may be committed in them.

Nota, L'use ore est, si soit un Barn ou Stable disjoyned at any distance from the house, nest Burglary.

Burglary may be committed in a Mansion-house, though all persons be out upon occasion.

So if a man hath two houses, and sometimes lives in one, sometimes in another.

A shop parcel of a Mansion-house

Burglary.

83

*in a Chamber
in some other
or which belongs to
Mansion-house.*

A Chamber in an Inns of Court,
where a person usually lodges, a
Mansion-house.

But a Booth is not, and therefore
remedy specially provided *per Stat.*

Post: 237

E. 6. c. 9.

But an Indictment *quod fregit clau-*
um ad ipsum interficiendum, no Fe-
ony, for no Mansion-house.

A. leases to B. a Shop, parcel of
is house, to work in, where B.
works in the day, which is broken,
uled not Burglary, because severed
er Lease. *Trin. 17 Jac.*

IV. With *Intent* to commit some Felony.

If the house be broken and entred
with an intent to commit a Tres-
pass, as to beat the owner, no Fe-
ony.

C. PC. c. 14.

If with intent to commit a Rape,
by some no Burglary, because no
Felony at Common Law; but this
seems otherwise, though the Felony
be not done.

The Indictment runs, *Burglariter*

Burglary.

~~felonice domum &c. fregerunt vel
intraverunt ad ipsum &c. interficien-
dum.~~

And by the Stat. of 18 El. c. 6.
Clergy taken away in all Burglary.

Arson.

Burning is Felony at Common Law by any that shall maliciously and voluntarily burn the house of another.

Burning.

Setting fire to a house, without burning it, or any part of it, no Felony ; but if part of the house be burnt thereby, it is Felony by Common Law.

Maliciously.

A. intending to burn only the house of *B.* thereby burns the house of *C.* this is Felony ; and he may be Indicted, That *ex malitia præcogit'* he burnt the house of *C.*

A. maliciously burns his own house, to the intent to burn others, but none else but his own burnt, ruled no Felony, but a great misdemeanor ; upon which set in the Pillory, and bound perpetually to good behaviour. 9 Car. B. R. Haines's Case.

Mes si le meason d'autre pē est
combre, est Felony.

The House.

vix 22: 23: In-set house, or Out-set house.

Par 2: 27: If parcel of the Mansion-house, as
Burning, Burny Stable, Mill-house, Sheep-house, Barn,
w Stacks of and no Clergy.

Corn & Hay: §. But burning of a Barn, not par-
cel of a Mansion-house, if it hath
Corn or Hay in it, Felony, otherwise
not.

But Felon not ouft of Clergy, un-
less part of a Mansion-house or Barn
with Corn.

Burning the frame of an house by
37 H. 8. attempting to burn a stack
of Corn by 3 & 4 E. 6. made Felo-
ny, but both Repealed 1 Ma.

But in Northumberland, Cumber-
land, Westmorland, and Durham, Fe-
lony to burn a stack of Corn by
43 El. c. 3.

Not., The Indictment of Burglary
Domum Mansionalem; of Arson on-
ly Domum.

Breach of Prison.

NO W we come to those Felonies that are the *hindrance
of amesning a Felon to publick Justice;*
and they are of three kinds in reference to the person that causeth it:

1. In the party himself :

{ Breach of Prison.

{ Escape.

2. In the Officer or person that permits it ; and then

{ Voluntary,
{ Involuntary.

3. In a Stranger, that is Rescue.

1. *Breach of Prison.*

At Common Law it seems all breach of Prison Felony ; but by Stat. 1 E. 2. *nullus de cætero, qui prisonam fregerit, subeat Judicium vite vel membrorum pro fractione prisone, nisi causa, pro qua capt' & imprisonat' fuerit, tale Judicium requirit.*

And herein these things are con-
siderable :

1. Who may *Arrest* or Imprison?
2. What a *Prison*?
3. What *breaking* a Prison?
4. What *cause* that requires
Judgment to make this Felony?

Arrest.

Who may Arrest or Imprison? This is either

1. By a private person.
2. By a publick Officer.
1. Arrest *by a private person*, and that two kinds :
1. Either commanded and enjoyned by Law.
2. Or permitted and allowed by Law.

Arrest commanded by Law :

C. P. C. 53,

1. Persons present at the committing of a Felony must use their endeavours to apprehend the Offender, otherwise they are to be fined and imprisoned.

Hence it is that if a Murder be committed in the day in a Town not enclosed, the Township shall be amerced; if in a walled-Town, be night or day, the Town shall be amerced [if Offender escape.] Stat.

H. 7. I.

So

Arrest.

So it seems if one strike another dangerously, though death hath not yet hapned.

C.P.C. 52.

2. Upon *Hue-and-Cry* well levied every man may and must arrest the Offender upon whom it is levied, by Stat. *Winchester*: and want of pursuit thereof is punishable by Fine and Imprisonment.

The manner of levying *Hue-and-Cry* is, where a Felony is committed or a dangerous stroke given, resort to the Constable, declare the Fact, describe the Party and the way he is gone, who thereupon is to raise the Town, be it by night or day, and to give the next Constable warning, and he the next.

3. In aid of an Officer that hath a lawful warrant *in fact*, or in Law to arrest a Malefactor.

And in these cases it seems it is the power of such private person to break the house, if upon demand he cannot be admitted to take the Offender. 7 E. 3. 16.

Dal. f. 249.

V. Cooke Jur.
Courts 177.

*Videtur, 1. Sur felony fait & ja
suspicion aucun poit arrester. 2 E. 4.*

2. Se

*Sur Arrest dt' amesner al Com-
Gaol, 20 E. 4. 6. ou deliver al
Table, 10 E. 4. 1.*

A permissive Arrest by a private
on :

If a Felony in fact be committed,
a private person suspect another
in probable cause, he may be ar-
rested, though in truth innocent:
These may be *probable causes* ;
Hue-and-Cry levied ;

- . Company with the Offenders.
- . Goods in his Custody ;
- . Living vagrantly ;
- . Common Fame.

But upon such suspicion he can- *c. Jur. cours*
break open the door of a house, ^{179.}
may enter the door being o-

The person arrested by either of
these means by a private person
must be brought to the Constable ;
if Constable be not to be found, *Dalt. fo. 414*
a Justice ; and in case of a Felony
put in the Stocks or Com-
Goal till he be brought to a
Constable.

2. Arrest

Arrest.

2. Arrest by a publick Officer without Proces of Law.

Nota, Whatsoever a private person may do in this case, an Officer as a private person may do.

Now these Officers,

I. Constable.

If complaint be made to a Constable of Felony committed, or of dangerous blow given, though the party not dead ; or in case there be an assault upon the Constable, or in case of any other breach of the Peace, the Constable may imprison the party in the Stocks, in the Gaol or in his House, till he can bring him before a Justice of Peace.

But if it be a bare breach of the Peace, unless it be in his view, he cannot arrest the party ; but complaint must be made to a Justice of Peace, for the Constable is but Conservator, not Justice of Peace unless a Felony be done.

If a Constable see an Affray, and the Malefactors fly into another County before arrest, he may pursue them

with them and arrest them there, and
when he must bring them before a
Justice of that County where ar-
rested.

But if the Escape was after arrest,
then he may retake them in ano-
ther County, and bring them to the
Court first.

He may break open doors to ^{Dal. 78.}
take an Offender, where Felony
was committed, or a dangerous wound
or is given.

2. By a Justice of Peace, who upon
complaint may issue out his War-
rant to apprehend the party :

1. A general Warrant to search ^{c. J^r. Courts,}
for Felons or stolen Goods, not ^{177.}
good.

2. If a Justice hath cause of suspi-
cion, he may arrest as a common per-
son, not as a Justice.

3. Upon complaint of a Felony
committed, and where doubt may
be of apprehending the Offender,
in assistance of the party suspect-
ing, he may grant his Warrant to
the Constable to apprehend the
party, but the party suspecting
ought

Arrest.

ought be present, because it is ~~for~~ ^{to} arrest.

But by virtue of such Warrant doors cannot be broken up.

4. But at the Sessions the Justice may award a *Capias* against the person indicted, and by virtue thereof the Sheriff may break open doors.

A party being apprehended by such Warrant, is either to be Committed, Bailed, or Discharged.

The *Commitment* by a Justice ought to be to the Common Gaol by the Stat. 23 H. 8. c. 2. and the *Mittimus* ought to be,

c. M. cap. 99.
Stat. 3 H. 7. c. 3.

1. Under Seal.
2. Contain the Cause.
3. Have an apt Conclusion
viz. there to stay till delivered by Law, otherwise the Warrant void.

c. PC. c. 100. And note, That a person committed for Treason, Felony, or other Crime, cannot be discharged

Arrest.

95

shall indicted and acquitted; or *Ignoramus* found, or discharged by Proclamation, or by the Kings Bench upon *Habeas Corpus*.

Bail.

Bail.

IN order to the consideration of Arrests and Escapes, here fit to consider of Bail and Mainprise in cases of Felony.

1. What Bail is ?
2. In what cases ?
3. By whom ?

1. *Bail* are Sureties taken by a person authorized, to appear at a day, and to answer and be justified by the Law.

The difference between Bail and *Mainprise* is, That Mainpernors are only Surety ; but Bail is a Custody, and therefore the Bail may reseize the Prisoner if they doubt he will fly ; and detain him and bring him before a Justice ; and the Justice ought to commit the Prisoner in discharge of the Bail ; or put him to find new Sureties : The like may be done by the Justices in case of insufficient Bail.

If a Justice of Peace take insufficient Bail, and the party appear not, he Justice finable by Justice of Goal Delivery.

The sufficiency of the Bail in respect of their number, two at least; and those Subsidy-men in case of felony.

And in respect of the sum, forty pounds at least.

Bail is either in a certain sum; or *corpus pro corpore*, in which case the Offender not appearing, the Surety shall not be Executed, but only fined. 29 *Affis.* 44.

2. *In what Cases?*

1. *Generally*; To refuse Bail where the party ought to be bailed, the party offering the same, is punishable as a Misdemeanour;

§. And admitting Bail when it ought not is punishable by the Justice of Goal Delivery by Fine, or punishable as a negligent Escape at Common Law, *de quo infra*.

2. *Particularly*; At Common law Bail in all Cases but Homicide; but now the Stat. *Westm.* I. c. 15.

H directs

directs in what Cases bailable, and what not?

At this day in all Offences below Felony, the party accused is bailable unless

1. Ousted by that Statute, or some other Statute.

2. Unless Judgment be given.

Crom. 154.

If a person be brought before a Justice, if it appears no Felony be committed, he may discharge him; but if a Felony be committed though it appears not that the party accused is guilty, yet he cannot discharge him, but must commit or bail him.

The cases of Felony wherein the parties are not bailable, are

1. In respect of the *hainousness* of the Offence.

1. In a Charge of Treason against the King's Person;

§. Counterfeiting the Seal;

§. Falsifying Money.

2. Arson, or burning Houses.

3. In a Charge of Homicide.

1. In case of a Charge of Murder Justices of Peace cannot bail, but

Dal. c. 114.

the

the King's Bench may ; but do not ^{Dal. c. 114.} in discretion, for the Stat. *West. I.* ^{V. C. super Stat.} extends not to that Court.

2. In case of Manslaughter, though be but *se defendendo*, and so appear to the Justices of Peace, they cannot ^{Dal. c. 114.} jail the party accused :

1. If he confess the Fact upon ^{Dal. c. 114.} examination ;

2. If taken with the manner, if apparently known or manifested that he killed another.

But if it be a *non liquet* that he be the person, and the Charge but Manslaughter, there it seems they may jail.

So if he have given a dangerous stroke, he may be bailed till the person be dead.

But such bailment where Manslaughter or other Felony is committed, must be

1. By two Justices, one of the *jurorūm.*

2. After Examination, &c.

And these be all the persons ^{ex-} ^{3 H. 7. c. 9.} ^{St. 1 & 2 Ph.} ^{& Ma. c. 13.} excluded from bail simply, in respect of the nature of the offence : Hence

C.West.1.c.15. 1. All Accessaries before or after
any Offence bailable; but if the
Principal be attainted, and Accessa-
ry indicted, he shall not be bailed
until he hath pleaded to the Indi-
ment.

2. Persons indicted of Larceny
before the Sheriff, if of good name.

3. Imprisonment for a light suspi-
cion, if of good name.

4. Indicted or accused of per-
Larceny only.

5. Appellee of Approver af-
death of Approver.

6. Accused for Trespass, for which
a man ought not to lose life or
member, if bail not taken away by
subsequent Stat.

Dal. c. 114.
f. 304.

And hence also a party indicted
for Burglary or Robbery may be
bailed.

2. As bail is ousted in some cases
in respect of the greatness and con-
sequence of the Offence charged,
it is in respect of the Notoricty of the
Offence: For bail is, when Statute
differenter, whether the party be
guilty or no: But when that indi-

fere

after
f the
cessa-
bailed
ndict-
rcem-
ame-
suspi-
erency is removed, the Offender
therwise bailable is become not
available.

1. If a Person be Attaint by Ut- West. I. c. 15.
lary of any Felony, yet if the De-
fendant comes in and pleads in
avoidance of the Utlary, be it in
Appeal or Indictment, the Kings
Bench may bail him.

2. If he be convict by Verdict or Dal. c. 114.
Confession of any Felony, he is not
available.

But if a man be convict of Man-
slaughter *se defendendo*, the Justices
of B. R. or Goal Delivery, or spe-
cial Writ may bail him, but not Justi- Dal. fo. 383.
cices of Peace: So if he have a Char-
ter of Pardon.

3. He that becomes an Approver
cannot be bailed.

4. He that Abjures cannot be
bailed.

5. He that's taken with the man-
ner not bailable; And consequently
neither he that's taken freshly upon
Hue-and-Cry. Bridges's Case. Ju-
stice of Peace fined 40*l.* for bailing
such.

6. He that breaks Prison not bailable.

7. Open and notorious Thieves not bailable.

But he that is taken for a light suspicion bailable.

But if the Presumption be strong, or the Defamation great, the Justices may refuse to bail him: This lies in discretion.

8. Those that are appealed by Provers, unless

1. The prover die.

2. The prover wave his Appeal.

3. Unless he be of good name.

And the reason hereof, because when the Approver appeals another, he confesseth himself guilty, and therefore induceth a presumption of guilt in another.

But this concerns not Justices of Peace, because no man can become Approver before them, because they cannot assign a Coroner; but they may take the Confession by way of Evidence.

But a bare Indictment or Appeal did not induce such a presumption that may hinder the bailing of a Person otherwise bailable. V. Stat. West.

c. 25.

But in Appeals of Death the St. PC, 18; Court in discretion admit not the Defendant to bail but upon weighty cause.

If the party be acquitted within the year upon Indictment, he is not to be discharged, but remanded or bailed at discretion, that an Appeal may be prosecuted against him, 3 H.

c. I.

3. *Who may take bail, or bail Offenders?*

Bail was taken either *virtute brevis*, or *ex officio*.

i. Bail taken *virtute brevis*, that was either General or Special.

The general Writs.

Hominem replegiando.

Habeas Corpus in the Kings Bench.

Writ of Mainprise; this was directed to the Sheriff, commanding him to deliver by the Mainprize of

Bail.

St. PC. 77.

twelve the "party indicted before him.

But now by Stat. 28 E. 3. c. 9. these Inquests before Sheriff are taken away, and consequently the Writ of Mainprize.

Special Writ, as where a party is convict of Manslaughter *se defensione* do ; a Special Writ to certifie the

2. *Bail ex officio.*

1. The *Kings Bench*, who have a higher Power than any other Power.

1. They may either in case of an Original Suit, by Indictment or Appeal before them ; or upon an Indictment or Commitment returned to them, by *Habeas Corpus* or *Certiorari*, bail where another Court cannot :

In case of Murder. B. Mainprise, 60. 63. &c.

In the cases prohibited by Stat. West. 1. c. 15. V. *Cook ibid. verb. Viscounts, & autres verb ne soient repleviables.*

2. *Justices of Goal Delivery*, who may bail in cases where Justices of Peace

ace cannot, if it be of a thing
thin their cognizance :

§. As a person convict of Man-
guarter *se defendendo* ;

§. Or a person convict of Man-
guarter that hath a Pardon to
ead.

3. Justices of Peace.

§. 1. They cannot bail in any
se, but where they have cogni-
nce of the cause; therefore if
ken upon Process of Rebellion out
f Chancery they cannot bail.

2. The Statutes that give power
to Justices of Peace to bail in case
of Felony, are 3 H. 7.c.3. 1 & 2 Ph.
Ma. c. 13. upon which two kinds
of bailments.

1. Upon the first Accusation, and
before Examination, and that doubt-
less must be done.

1. By two Justices, whereof
one of *Quorum*.

2. After Examination taken Cr. 156.
concerning the Offence.

2. After Commitment : And
though some Opinion be that he
may be bailed by one Justice, yet it
seems

seems otherwise; for the Stat. of
1 R.3. that gave power to one, stands
repealed by 3 H. 7.

3. After Indictment and Proces
thereupon issued in case of Trespass
or Misdemeanor, or Penal Statute,
not prohibiting bail, he may be
bailed by two Justices, whereof one
of the *Quorum*; and by some by one
Justice, and thereupon may grant a
Superfet. to the *Exigent.* But it
seems this holds not upon a Proces
upon Indictment of Felony. *Quare.*

4. The Sheriff, Baily, or Officers
which was of Indictment before
them: But these are removed from
that power, as it seems by the Stat.

28 E. 3. c. 9.

1 E. 3. 4. c. 3. whereby they are
not to make Proces, but to remove
them to the Sessions of the Peace.

Rumper Prison.

Now having considered the persons that may arrest and jail, it makes way to consider the Offence against such Arrest or Imprisonment, by breaking such Prison, &c. And herein ensues the second Consideration.

2. What a *Prison* within this Statute?

1. The Stocks.
2. The Prison of a Lord of a Franchise.
3. The Custody of any that lawfully arrests, or the house of the Constable, or other person where detained.
4. The Church, where a person abjuring is.
5. The Prison of the Ordinary, which is now ousted, Stat. 23 H. 8. c. 11.

3. What

3. What a breaking?

If the Prison be fired without the privity of the Prisoner, he may lawfully break it to save himself.

2. If a Goaler do voluntarily permit him to escape, Felony in the Goaler, not in the Prisoner; but if negligent, Felony in the Prisoner, and Misdemeanor in the Goaler.

3. If Prisoner under Custody be rescued, or Prison broke by strangers without his procurement, no Felony in the Prisoner.

4. Going out the doors upon, no Felony; for the Statute requires an actual breaking.

4. *Nisi causa; tale judicium, &c.*

1. If A. mortally wound B. and is committed, and he break Prison, and B. then die, no Felony.

2. If a Felony made by a subsequent Statute, and an Offender committed therefore, break Prison, Felony.

3. Com-

3. Committed for suspicion of Felony, yet if a Felony done, breaking Prison Felony.

4. If the Offence for which the party was committed appear not by matter of Record, necessary a Felony be done, else breach of Prison no Felony.

But if it appear by matter of Record, and the party taken by *Capias*, if he break Prison, Felony, though no Felony done.

5. If Felony was done, yet breach of Prison no Felony, unless a lawful *Mittimus, de quo supra.*

6. The Indictment for the breach must be Special, that it may appear he was committed for Felony.

5. *Tale Judicium requirit.*

1. Breach of Prison turns into Felony only, though the party were committed for Treason.

But if a Prisoner break a Prison wherein Traitors are, to let out the Traitors, this is Treason.

Rumper Prison.

2. A man imprisoned for Petit Larceny, or *se defendendo*, breaks Prison, no Felony.

3. If a Prisoner break Prison he may be Arraigned of that before he be convict of the first Felony.

But a Goaler permitting a voluntary Escape shall not be Arraigned till the Prisoner be first attaint; for if the Prisoner be acquit, the Escape dispuishable.

V.Dal.331.

Escape

Escape in the party.

Nota, If a person escapes before arrest, not punishable in him Felony, but for the Flight he forfeits Goods when presented.

In case a man slain in the day, if the Offender Escape, Township merced. *Vide supra.*

If sint si soit dangerousment wound,
H. 7. c. 1. *Et si soit vill immure ser-*
merce, soit ceo in jour ou nuit. 3 E.3.
Coron. 299. Stat. Winton, cap. 4.

Escape

*Escape in the Officer, or him
that makes Arrest.*

THIS is either in case of Arrest,

1. By a Stranger.

2. By an Officer.

If a stranger arrest a man for Felony, or suspicion thereof, and deliver him over to four others, and they receive him and let him go at large, this an Escape in both; for the first man should have delivered him to the Constable; and the latter should not have let him go at large.

And the same Law seems to be for an escape by a stranger that hath a Prisoner in his Custody, as for an Officer in case of Escape voluntary or negligent.

Escape by an Officer.

Escape of an Officer.

1. Negligent.

1. Bailing a person not bailable, through ignorance, by one that hath power to bail, a negligent Escape.

But it seems if done by a Goaler a voluntary Escape; because he hath no such power.

2. The ordinary punishment of a negligent Escape.

1. Of a party attaint
100 l.

2. Of a party indict
5 l.

3. Of a party not indict at discretion.

3. For insufficiency of the Gaoler, the Sheriff must answer for negligent Escapes.

Escape.

4. A Goaler *de facto*, though not *de jure*, must answer for Escapes.

5. If after a negligent Escape the Goaler retake him upon fresh Suit before he be punished, it excuseth.

If the Constable bring a person to Goal, the Goaler refuseth him, the Vil shall be charged, and Goaler fined.

2. Voluntary Escape.

1. Hath the same Crime that the person permitted to Escape stood committed for, *viz.* Treason or Felony.

2. But this is in the immediate person that permits it; and therefore though civilly the Sheriff must answer for offences of Goaler, yet not criminally.

3. There must be a Felony really done, and a Commitment by a lawful Warrant.

4. If within the year the Prisoner be acquitted upon Indictment, yet voluntary Escape is punishable.

St. 14 E. 3.
2. 10.

2 Jus: 1539
vies:

Felony, because wife intitled to her
Appeal.

5. The Escape if voluntary pu-
nishable *ut supra*, though the Pri-
soner were not indicted. Dal. fol. 336.
Dy. 99.

Rescue.

1. **A** Hindrance of a person to be arrested that has committed Felony is a Misdemeanor, but no Felony.

2. But if the party be arrested, and then rescued, if the arrest was for Felony, the Rescuer is a Felon; if for Treason, a Traitor; because they are all Principals.

But he shall not be arraigned till the Principal attainted; and if the Principal die before attainder, the Rescuer shall be fined and imprisoned.

3. There must be a Felony really done, and a lawful Commitment.

N. Rescue hors de custody de Constable, &c. est Felony, licet ne fuit amesme al Gaol.

Felonies

Felonies by the Statute.

C. PL. C. C. 4:

H En. 7. cap. 14. Imagining and *conspiring* to kill the King, or any of his Council.

§. Clergy not taken away.

1 Jac. c. 12.

§. Witchcraft, *de quo supra.*

§. 25 H. 8. c. 6. revived by 5 El.

c. 17.

Buggery with Man or Beast.

§. Without benefit of Clergy.

Debet esse Penetratio as well as *Emissio.*

In this and Rape *carnaliter cognovit.*

13 E. I. c. 34.

Rape: This was Felony at Common Law; then by Stat. Westm. I. c. 13. made but a Misdemeanor; then by this Statute restored to Felony again.

And hence it is that it is not inquireable in a Leet, because though now Felony, yet it lost its nature by W. I. c. 13.

Felonies by the Statute.

Nul Appeal done al party.

13 E. 3. Coron. 169.

If the woman be under ten years, then though she consent, yet by Stat. 18 El. c. 6. it is a Rape; if above, ten years, if she consent not, a Rape, though she consent after.

But in such case of a subsequent consent, the Stat. 6 R. 2. c. 6. gives the Appeal to the Husband, if none to the Father, &c.

Clergy taken away by Stat. 18 El. c. 7. upon Conviction by verdict, or Confession, or outlawed.

Cestuy que aid in Rape est Ravistor.

11 H. 4. 13.

3 H. 7. c. 2.

Taking a woman against her will and marrying her, Felony.

1. Such Maid, Widow, or Wife must have Lands, Tenements, or Goods, or be Heir Apparent.

2. She must be taken against her will.

3. She must be married or defiled.

4. Extends not to taking a Ward or Bondwoman.

Nota,

Nota, The taking away in one County, and marrying in another, Indicted where married; and they may enquire of the forcible taking.
2. Privy to the marriage, but not to the force, not Guilty. 3. Marriage with consent not excusing so long as she is under the force, 13 Car. Fulwood's Case.

All Accessaries before or after made Principals by this Act.

Clergy taken away by Stat. 39 El. c. 2.

5 H. 4. c. 5.

Malicious cutting out Tongue or putting out Eyes, Felony.

Clergy not taken away.

Extends not to cutting off Ears.

8 H. 6. c. 12.

Stealing, carrying away or avoiding Records, Felony. And

The Judges of either Bench enabled to hear and determine the same.

Accessaries before made Principals.

§. Clergy allowable.

5 H. 4. c. 4.

Felonies by the Statute.

Multiplication of Gold or Silver,
Felony:

1 H. 7. c. 1.

Hunting unlawfully in Forests,
Chases, or Warrens with painted
faces by night, and rescuers, *viz.*
other then the party arrested, Fel-
lony.

31 El. c. 4.

Imbezelling the King's Armour,
&c. Felony.

Qualifications.

1. Ought to be impeached within
a year.

2. Offender loseth Lands but du-
ring life.

3. No Corruption of blood.

4. Wife loseth not Dower.

5. Defendant admitted to proof.

3 Jac. c. 4.

Subjects passing Sea to serve for-
eign Prince, not having taken Oath
of Obedience :

No Corruption of blood :
Offender may have Clergy.'

Articuli super Cartas c. 2.

Purveyors Felons in certain cases;

§. They may have Clergy.

39 El. c. 17.

Wandring Souldiers Felons in certain cases.

§. Excluded of Clergy.

18 H. 6. c. 19.

Souldiers retained, as is prescribed the Act, departing from their captains without license.

§. 2 E. 6. c. 2. *ad idem.*

§. Clergy excluded.

1 Jac. 12.

Marrying a second husband or wife, the former living, Felony: except cases following:

1. The man under fourteen, or the wife under twelve at time of first marriage, and not agreeing after first Espousals, may marry a second husband or wife.

2. A man or wife absent above seven years, second marriage no Felony: If beyond Sea, though notice of

Felonies by the Statute.

1 Jac. II.

of life; If in *England*, then without notice.

3. After a Divorce, though *mensa & thoro* only.

4. After a nullity declared of the former marriage by Ecclesiastical Court,

Offenders have Clergy

1 Jac. c. 31.

§. For going with a Plague for but this discontinued.

14 El. 3. 20.

Goaler compelling Prisoner, by Dures to become Appellor, Felony whether the Appellees be acquitted or not.

3 H. 5. c. 1.

Coining, or bringing in Gall half pence, Suskins, or Dodkins.

§. And 2 H. 6. c. 9. payment of blanks.

Offender hath Clergy

17 E. 3. n. 15.

Transportation of Silver, or Importation of false money made Felony.

Offender hath Clergy

18 H. 6. c. 15.

Expon

Exportation of Wooll or Woolls,
other than to the Staple of Ca-

37 E. 3. 19.

Stealing Falcons, &c. or conceal-
ing the same after Proclamation, Fe-
bry.

Offender hath Clergy.

3 H. 6. c. 1.

Congregation of Masons to pre-
vent Statutes of Labourers;

§. But this Obsolete by the Sta-
te 5 El. the Acts to which it re-
lates are repealed.

27 El. c. 2.

Receiving, retaining, or main-
aining a Jesuit or Popish Priest
knowingly,

Clergy excluded.

35 El. c. 1.

Felony refusing to make Abjura-
tion, or after Abjuration not to de-
part, in some case

Clergy excluded.

1 & 2 Ph. & M. c. 4.

Egyptians above fourteen years
remaining here a month.

§. And 5 El. c. 20. takes away
Clergy.

39 El.

Felonies by the Statute.

39 El. c. 4. 1 Jac. c. 7. 25.

Dangerous Rogue adjudged to
the Gallies; and returning without
license, Felony :

§. But Offender hath Clergy :

§. But branded Rogue Felon, and
no Clergy.

5 El. c. 14.

Forging a Deed after a former
Conviction.

C. CP. f. 172.

If a man be convict or condemned
of publishing a forged Deed,
and after he forge a Deed, this is
Felony.

If the offence were after a former,
but before conviction thereof, no
Felony,

Clergy ousted.

8 El. c. 3.

Sending sheep beyond Sea after
former conviction.

Clergy allowed.

33 H. 6. c. 1.

Servants after decease of their
Master, riotously spoiling Goods,
&c.

Offenders shall have Clergy.

21 H. 8. 7.

Servants imbezelling Goods of
their Masters delivered to them, Fel-
ony;

But the Statute of 27 H. 8. c. 17.
that took away Clergy being Re-
pealed by 1 E. 6. c. 12. they may
now have Clergy.

22 H. 8. c. 11. 2 & 3 Ph. &
1a. c. 19.

Cutting Powdike, Felony,
Offender hath Clergy.

43 El. c. 13.

Detaining persons in Cumberland,
&c. against their will, and giving
or receiving blackmail, &c. Felony,
Without Clergy.

Mispris-

Misprisions.

NO W we come to Offences Criminal, but *not Capital*; and those of two kinds :

1. Offences by Common Law:
2. Offences against special Statutes.

Offences by *Common Law* do Capital, are either greater Offences or lesser :

Greater ; and those come under name of *Misprisions*, which again are of two sorts :

Negative, in not doing that they ought, or of Omission.

Positive, in doing some great Misdemeanor they ought not.

Misprision

Misprision of Treason.

The Negative Misprisions.

Misprision of Treason.

All Treason includes ^{2 R. 3. 9.}

Misprision: The Concealing of any reason, is declared Misprision only by the Statute of 1, 2 Mar. c. 10. *qui inducit auxilium misprisione.*

But this in case of bare knowledge; for if knowledge and Assent is Treason: and though the Treason can be by Statute, yet the concealing hereof is Misprision of Treason.

Every man therefore that knoweth a Treason, must with all speed reveal it to the King, his Privy Council, or other Magistrate.

He that receives and comforts a Traitor knowingly, be it a counterfeiter of Coin or other, is a Principal Traitor, and not only guilty of Misprision. *Abingdon's Case against the Opinion in Dyer 296. Comier's Case.* ^{C. P. C. 64.}

Mispriſion of Treafon.

The Judgment in case of Mispriſion of Treafon is Imprifonment during life, forfeiture of Goods, forfeiture of profits of Land during life.

Nota si un comust un que ad counterfei Coigne, & ne lui discover, est Misprision de Treafon. Mes si un sollement utter counterfei coigne sciant ce eſtre counterfei nest Misprision de Treafon, mes ferra Fine & Imprison. Iſſint resolve a Newgate. 1661.

Mispriſion

Mispriſion of Felony.

Misprision of Felony is either by Common Law, or by Statute.

By the Common Law a concealment of a Felony, or procuring of the concealing thereof.

The Punishment.

1. If a common Person Fine and Imprisonment.

2. If an Officer, as Sheriff, Coroner, Imprisonment for a year, and Ransome at the King's pleasure by Stat. W. I. c. 9.

By the Stat. 3 H.7.c.1. 33 H.8.c.6. one knowing of an unlawful Assembly, and not discovering it within 24 hours.

Concealment of Jurors, v. Stat.

K

Theft

Theftbote.

3. **T**heftbote, which is more than a bare Misprision of Felony, and is where the Owner doth not know the Felony, but takes his Goods again, or other Amends, not to Prosecute.

But taking the Goods again barely no offence, unless he favour the Thief.

The punishment hereof is Ransome and Imprisonment.

Misprisions

Misprisions Positive, or of Commission.

mon
on o i. 1. **D**iscovery by one of the C. PC. c.46.
wners grand Inquest of the per-
take persons Indicted, or Evidence against
ends them, Misprision, punishable by Fine
bare and Imprisonment, but no Felony,
nor Treason.

Ran- 2. A person dissuading Witnesses C. PC. c.64.
from bringing in Evidence against a
Felon is no Accessary, but a great
Misprision, punishable by Fine and
Imprisonment.

3. Reproaching a Judge, assaulting
an Attorney against him, or abusing
a Juror that gave verdict against
him; a great Misprision, punishable
by Fine and Imprisonment.

4. Rescuing a Prisoner from the
Bar of the Courts of *B. R. Canc.*
B.C. or *Exchequer*, a Misprision for
which the party shall lose his Hand,
Goods, Profits of Lands, during
Life, and perpetual Imprisonment.

5. If a man strike sitting the four
Courts at *Westminster*, in the pre-
K 2 fence

fence of the Court, the like Judgment.

6. If in presence of those Courts, or before Justices of Assize or *Oyer & Terminer*, a person draw his Sword upon any Judge or Justice, though he strikes not, or strike another, like Judgment.

7. By Stat. 33 H. 8. c. 12. striking in the King's presence, drawing blood; loss of hand and perpetual Imprisonment, Fine and Ransom.

8. By Stat. 14 El. c. 3. forging of Money not currant Misprision of Treason.

9. Stranger uttering false Money made within this Realm, knowing it Counterfeit, 3 H. 7. 10.

10. A Lord of Parliament departing from Parliament, 3 E. 3..

Maibem.

And hither we may refer *Maihem*, which though it be a particular Crime, for which Appeal lieth, yet it is not Felony of death.

Cutting off the hand, or striking out a tooth, Maihem, but not cutting off the ear. C.C.P.c.42

The Judgment is only Fine and Damages; and therefore if recovery in Trespass, it is a good barr in Appeal of Maihem.

Offences not Capital.

O ffences of an Inferior nature; they are either such as are committed by an Officer.

Neglect of Duty,
Bribery,
Extortion.

Or such as refer to a common person, without relation to Office, and those reducible to three kinds:

1. Breaches of publick Peace, and therein

1. Of Affrays.
2. Of Riots.
3. Of Forceable Entries.
4. Barretries.
5. Riding armed.

2. Deceipts and Cozenage.
3. Nusances.

Decay of Bridges.

Decay of High-ways.

Inns and Alehouses.

Breach

Breach of the Peace.

A FF R A Y,

If weapons drawn, or stroke given or offered; but words no Affray: menace to kill or beat, no Affray; but yet for safeguard of Peace, Constable may bring them before Justice.

In Affrays considerable,

i. What a *private man* may do?

Private persons may stay Affrayers till heat over, and deliver them to Constable.

If person hurt another danger-
ously, private person may arrest the Offender, and bring him to Goal or next Justice.

2. What by a *Constable*.

i. Affray in presence of a Constable, he ought to do his endeavour to suppress it, otherwise finable.

2. If an Affrayer fly to a house, or if made in a house, Con-

Breach of the Peace.

SOL

stable may break open house to preserve peace, or take the Offender.

3. If in Affray assault be made upon the Constable, he may strike again, or imprison Offender.
4. Constable may in such case imprison till he find surety of Peace.
5. But it seems if Affray past, and not in view of Constable, he cannot imprison without warrant of the Justice unless Felony done, or like to be done.
3. What by a *Justice*?
 1. In his presence, the same power that a private person or Constable, and may imprison till surety of Peace found; the like upon Complaint.
 2. If dangerous hurt, Justice may imprison till appear whether the party die or live, or bail the party.

The former better discretion.

Riot.

Riot.

When above the number of two meet to do some unlawful act, and do act it; but if they meet and act it not, an unlawful Assembly, in power of Justices to suppress them,
13 H. 4. c. 7.

A man for safeguard of his house against Malefactors or Trespassers, may assemble his Friends for his Defence.

But he cannot assemble to prevent a beating threatened in his presence.

Riot recorded by one Justice upon view traversable; by two not, because pursuant to the Statute.

Forcible

Forcible Entry.

Forcible Entry must be either
Manu forti,
Furnished with unusual weapons,
Menace of life or limb.
Breaking open door :
Contra it seems if door only latched,
Ejecting forcibly the possessors.
Cum multitudine gentium, one may
commit a Force, three at least a Riot.

Forcible

Forcible Detainer.

Menacing the Possessor to go out upon pain of loss of life or limb.

Unusual Weapons or Company.

§. Refusing to admit the Justice to come in to view the Force.

Detainer with Force justifiable where party in possession three years;

§. But though his Possession lawful, yet if within the three years actually removed, though restored by the Justices, enables not a Detainer with Force.

But if the three years Possession hath been by Force, then the last forcible Detainer punishable, and hinders not Restitution.

If a Disseisee within the three years make lawful Claim, this an Interruption of his Possession.

Restitution.

*Restitution.**1. By whom?*

1. Justices *B. R.* may restore upon Indictment removed before them.

2. One Justice of Peace cannot restore upon an Indictment before them; nor Sessions of Peace, unless upon Indictment found at Sessions.

3. It seems Justice of Goal Delivery or Oyer and Terminer, cannot Restore.

2. How?

Upon view.

Upon Indictment;

Must be sufficient.,

Adbuc extra tenet.

If Erroneous, may be superseded by the same Justice before Executed. After it is Executed then Rerestitution in *B. R.* upon Indictment qualified.

Resti-

Restitution stayed.

By Certiorari.

By quashing Indictment.

By pleading thereunto,
which is nevertheless
in discretion.

Barretry:

Barretry.

Riding Armed.

Going Armed.

V. Stat. 20 R. 2. c. 1. 7 R. 2. c. 13.
2 E. 2. c. 3. Stat. Northampton.

Nuisances.

Nusances.

BRIDGES PUBLICK.

Are not chargeable upon a particular person, but *ratione temporis.*

But of Common Right repairable by the whole County.

The manner of Repairing directed by Stat. 22 H. 8. c. 5.

Hig-

High-ways.

High-ways : Provisions,

1. For their *Enlarging* and removing Trees within 200 foot of either side.

13 E. 1. c. 5.

5 El. c. 15.

2. For their Amending *vide* the Stat.

5 El. c. 13.

29 El. c. 5.

2 & 3 P. M. c. 8.

The *Charge* of repair of High-ways lies of common right upon that Parish wherein they are, unless

1. A Special Prescription cast it upon another.

2. Unless the Owner of the Land, in which they are, inclose it, then it must be cast upon the Owner.

But they that have Ditches on either side ought to scour them, 8 H.

7. 5.

Inns,

Ale-houses.

Bawdy-houses.

Gaming-houses.

L

Common

Common Inns.

I. ANY person may erect a Common Inn, so it be not *ad monimentum*.

1. In respect of their multitude, when there are enough ancient Inns before.
2. In respect of the inconvenience of the place or situation.
3. In respect of Disorder there permitted.

All which are common Nuisances, and may be presented and fined.

2. He that erects a Common Inn and *refuses to entertain* Guests, may be Indicted and fined for the same.

3. If a Common Inn, contrary to Statute, suffer persons to tipple there as Ale-houses, he may be compelled to be bound; or may be suppressed as Ale-houses; or may be Indicted at Sessions.

Ale

Ale-houses.

SEE for *Ale-houses*, the suppression of them, and the punishing of tippling in them, 5 E.6. c.25. Jac. c.9. 4 Jac. c. 5. 7 Jac. c. 10, 1 Jac. c. 7. 1 Car. c. 4. 3 Car. 3.

An Ale-house-keeper suppressed according to the Stat. of 5 E.6. c.25. by two Justices, whereof one of the *Quorum*, cannot be allowed but in open Sessions.

An Ale-house-keeper suppressed for the Offences 7 Jac. c.18. 21 Jac. 7. for suffering tippling, or 7 Jac. 10. for selling less than is there directed, or 21 Jac. c. 7. for continuing drinking in another Ale-house, or 21 Jac. for being drunk, cannot be licensed in three years, and if he be, such License void.

5 & 6 E. 6. c. 25.

None to sell Ale, &c. unless licensed in open Sessions, or by two Justices, one of the *Quorum*.

Ale-houses.

Persons licensed to be bound by Recog. not to keep unlawful Games and for using good Order.

Recogn. return next Quar. Sessions.

Process upon Recogn. at Sessions.

Persons unlicensed keeping Ale house imprisoned by two Justices one of the *Quorum*, for three days and till Recogn. given not to selling Ale.

Certificate of such Recogn. Conviction, and Fine 20 s.

I Jac. c. 9.

Ale-man, Inn-keeper or Victuals suffering Inhabitant to sit *tippling* before him forfeit 10 s. to the Poor.

Conviction before one Justice &c. by two Witnesses.

Penalties levied by Constable and Churchwardens by Distress at Sale within six days.

In default of distress Offender committed till payment per Justice view.

Constable, &c. neglecting to lay or certifie default of distress, forfeits 40 s.

4 Jac. c. 5.

Person drunk forfeits 5 s. to be paid, within a week after Conviction, to the poor: If neglect, levy by distress, by Warrant from Justice; if not able to pay commit to stocks for six hours.

Ale Constable neglecting duty forf. 10 s. to the use of the Poor.

Any person *sitting tippling* dwelling in the same Parish, forf. 3 s. d. to poor, proved before Justice, levy *per* distress, and for want of distress commit *per* Justice to House of Correction.

Second offence bound to good Behaviour.

Constables, &c. bound by Oaths to present Offences.

Punishment within six months.

21 Jac. cap. 7.

Former act extend to Foreigners, as well as Inhabitants.

One Witness suffice to convict, or view of Justice.

Ale-house suppress not licensed for three years *per* Stat. 7 Jac. c. 10.

Ale-houses.

I Car. cap. 4. Former Stat
extend to Inn-Keeper^s and Ta
verns.

Offence

Stat
T
Offences not Capital by
Statute.

Offences not Capital more par-
ticularly by Statute.

Forgery by Stat. 5 El. c. 14.

^{+ 2 G. 2:} Forgery is Felony ^{2d} & ^{not}
Punishable of Clergy: committed after 29th
June 1729:/

Perjury, and Subornation thereof

El. c. 9.

^{before}
Proc. & L. G. 2: Powers given to a Justice
to send a Person to & Arrest of Person for
a time not exceeding 7th before Punishment
is to be inflicted, as to transport a Person
for 7 years.

Champerty, Embracery and Main-
tenance, 32 H. 8. c. 9.

Ingrossing, Forestalling, and Regrating, 5 E. 6. c. 14.

Salt Victual within Statute.

Apples and Cherries, &c. no Victual.

Mault seems not, but Corn and Grain expressly Victual by 5 Ed. 6.

A Stranger, or Subject, bringing Victual into the Realm, may sell them in gross, but the Vendee cannot; neither may any Merchant buy within the Realm, and sell in gross.

Attempting to enhance the price of Merchandise a kind of forestalling.

Selling Corn in the Sheaf unlawful.

Matters

Matters of Religion.

R Eviling the Sacraments, Imprisonment, Fine, and Ransom, 1 E. 6. c. 1. Repealed, 1 Ma. c. 2. revived 1 El. c. 7.

2. Not coming to Church to hear Common Prayer, by 5 E. 6. c. 1. subject to Church Censures. ..

Nota, 3 E. 6. c. 1. settled a Book of Common Prayer; Injoyned the use: Refusing to use it, using other, or depraving it, Imprisonment for six months for first offence, twelve months for second, during life for third.

5 E. 6. c. 1. Alters the Prayers, But applies the Penalty to the new Book.

Nota, Repeal 1 Ma. that *Repealed* 1 Jac. c. 25.

1 El. c. 2. Enacts the use of the Book of 5 E. 6. with some Alterations.

Any that,

1. Refuse to use it;

2. Use

Matters of Religion.

2. Use another form ;
3. Deprave it.
- §. If Spiritual, six months Imprisonment first Offence ; one years Imprisonment second Offence, Deprivation third Offence.

If Lay, first Offence twelve months Imprisonment, second Offence during life.

Depraving Book of Common Prayer, first offence 100 Marks ; second offence 400 Marks ; third offence forf. Goods, and Imprisonment during life.

8 El. c. 1. touching Consecrating Bishops.

Concerning repair to Church.

1 El. 2. Every Sunday and Holiday *sub pena 12 d. per diem.*

§. 23 El. c. 1. 20 l. *per mensem* for absenting ; and if absent twelve months upon Certificate, bound to good behaviour.

29 El. c. 2. Conviction of Recusancy.

35 El. c. 1. Penalty of disswading from Church ; holding of Conventicles ; commit to Prison without bail until Conformity. Non-

Nonconformity within three months after Conviction, shall abjure the Realm.

Not departing, or returning, Fe-
lony without benefit of Clergy.

Submitting discharged of the Pe-
nalty by this Act.

Relapsing loseth the benefit of the Submission.

Ten pounds *per mensem* for every person retaining or relieving Recu-
fiant after notice.

Cap. 2. Recusants not to remove five miles from dwelling.

1 Jac. c. 4. Conformable heir of a Recusant discharged : third part disch. of forfeiture.

Penalty of sending Children to Seminaries.

3 Jac. c. 4. & 5. Penalty for re-
fusing Oath of Supremacy.

1 El. c. 1.

5 El. c. 1.

Of Obedience,

3 Jac. c. 4.

7 Jac. c. 6.

Kings Bench.

NOW we come to consider
of the *Proceeding* against a
party for Felony, and therein

1. Concerning the *Jurisdiction or Court* wherein Proceedings are to be had in Capital Causes; and those are principally,

1. The Kings Bench.
2. Justices of Goal Delivery.
3. Justices of Oyer and Terminer and Assizes.
4. The Sheriff and Coroner.
5. The Lord Steward of the Household.

The *Kings Bench* the Supreme Court of Criminal Jurisdiction. It is a Court of Oyer and Terminer, Goal Delivery, and Eyre, in that County where it sits.

9 R. Sanchez's Case. By the coming of the Kings Bench into any County, during the sitting thereof in that County, all power and proceedings of Commissioners of Oyer and Terminer is suspended.

But a Special Commission of Oyer and Terminer bearing *Teste* in the Term may be granted ; and Kings Bench may adjourn, and then they may sit.

Where the Kings Bench proceeds upon an Offence committed in the same County, there need not fifteen days between the *Teste* and Return of the *Venire facias* ; But if they proceed upon a Cause removed by *Certiorari*, they must have fifteen days.

9 Rep. Sam
chart's Case.

Goal Delivery.

*c. Jur. Courts
sub hoc titulo.*

*in y state
Togels vol.
y: 140
How bry
return: in
Court in y
Goal Deliv:*

1. **T**He Justices of Peace ought to deliver the Indictments not determined unto these Judges, and they may Arraign any person in Prison upon them.
2. They may take Indictments against any person in Prison, and so may Justices of Oyer and Terminer, and herein they have a concurrent Jurisdiction.
3. They may take a Pannel returned by the Sheriff without a Precept.
4. They may deliver by Proclamation persons suspected, where there is no Evidence to Indict them.
5. May award Execution of persons in Prison outlawed before Justices of Peace.
6. May assign Coroner to an Appeal, and make Process against the Appellee in a Foreign County.
7. May punish those that unduly bail Prisoners, Stat. de Finibus, 1 C 2 Ph. & Ma. c. 13.
8. May

8. May deliver the Goal of persons committed for High Treason.

9. May Receive Appeals by Bill against persons in Prison.

10. By Stat. 9 E. 3. 15. must send their Records into the Treasury of the Exchequer at *Michaelmas*.

11. Others may be added to the former Commission by Commission of Association, or their power committed to fewer by *Si non Omnes*.

12. By Stat. 2 & 3 Ph. & Ma. c. 18. a General Commission of Goal Delivery through the County determines not a Special Commission granted in a Corporation, &c. parallel thereof.

13. By Stat. 1 E. 6. c. 7. the subsequent Commissioners of Goal Delivery, power to give Judgment upon such as were Reprieved before Judgment by former Commissioners and Process before any former Commissioners of Peace, Goal Delivery, Dyer and Terminer, or others not discontinued by granting new Commissions.

If a Prisoner be bailed, he is yet
in

Goal Delivery.

in Prison to be Arraigned before these Justices, for he is a Prisoner: contrary in case of Mainprize, 21 H. 7. 33. 9 E. 4. 2. 39 H. 6. 27.

Cr. Jur. 226.



Although their Commission determine with their Session, after they are gone, they may command a Reprieve or Execution, Dyer 205.

*Licet soit ad Gaolum deliberandum
bac vice uncore pnt' adjourner lour
Commission,* Cr. Jur. 226.

*Commission d'Oyer & Terminer, &
Goal Delivery, pnt' Estoyer ensemble,
Ibid. Bro. Commission 24.*

*Justices de Goa! Delivery & Oyer
& Terminer, pnt' enquire per ambi-
deux powers, and make up their Re-
cords accordingly, 9 H. 7. 9. Cr. Jur.
226.*

Oyer and Terminer.

1. The Justices Authority must be by Commission, and not by Writ, otherwise their Proceedings void. 42 *Aff.* 12.

2. They cannot proceed but upon an Indictment taken before themselves.

3. By good Opinion they may proceed the same day or Session against a party Indicted before them. *Nota le contrar' ad eſtre adjuge.*

4. Where Offences are limited to be heard and determined in any Court of Record, generally it may be heard and determined by them. *Quare, for Gregory's Case contra.* V. *Dy.* 236.

5. Others may be added, or their power contracted by Association, or *Si non omnes*, as before.

6. One sitting without Adjournment determines their Commission.

7. Justices of Oyer and Terminer, or of Peace, cannot assign a Coroner, as Justices of Goal Delivery may.

8. By Stat. 9 E. 3. they are also to fend their Records determined into the *Excheque*.

V. 12 Aft. 2 L.

9. A *Supersedeas* suspends their power, and a *Procedendo* revives it; but a new Commission determines it; the like of Commission of *Nisi prius*, &c. but it determines not without notice.

1. By shewing the new Commission.

2. Or proclaiming it in the County.

3. Or Sessions held by new Commission.

10. An Award upon the Roll not sufficient to return a Jury, but a Precept under Seal of the Commissioners.

11. And *Nota*, That a Special Commission of Oyer and Terminer may be granted to sit in one County to hear and determine Treasons, &c. in another, but then the Indictment

V. 2 & 3 P. &
M.C. 10.

mul

must be found in proper County, and
the Trial by Jurors of proper Coun-
y. C. P.C. fo. 27.

M 2

Justices

Justices of Assise.

BY Stat. 27 E. I. c. 3. *de finibus*
Justices of Assise have power
to deliver Goals of Felons and Mur-
derers.

And by some opinion they may
do it *virtute officii*, without any spe-
cial Commission. *S. PC. c. 5.*

But in case of Counterfeiting
Coin, &c. upon Stat. 3 H. 5. Stat. 2.
c. 7. they must have a Special Com-
mission.

Justices

Justices of Peace.

THE Stat. of 18 E. 3. c. 2. gives them power by Commission to hear and determine Felonies and Trespasses against the Peace.

But then there must be a special S. P.C.L. 2.c. 5. Clause in their Commission, Necnon ad and' & terminand' felonias, &c. Otherwise they cannot do it.

Yet that Clause doth not in propriety make the Justices of Peace Justices of Oyer and Terminer, because that it is a distinct Commission; and therefore a Statute, as that of 5 El. c. 14. limiting Forgery to be heard and determined before Justices of Oyer and Terminer, gives not the power therein to Justices of Peace; but the Justices of the Kings Bench are Justices of Oyer and Terminer within that Statute.

V. C. P.C. c. 14.
Dol. c. 20.
9 Rep. 118.

By force of the general words of their Commission they may en- Dy. 67. quire of Murder at their Sessions; or though by Stat. 6 E. 1. c. 9.

and 4 E. 3. Murders and other Homicides must stay till Goal Delivery; yet the Stat. of 18 E. 3. c. 2. 34 E. 3. c. 1. 17 R. 2. c. 10. hath enlarged their Commission and Power.

Yet in respect the Stat. 1 & 2 Ph. & Ma. c. 13. directs Justices of Peace to take Examinations in Cases of Homicide and other Felonies, and to certifie them to the Justices of Goal Delivery: in point of Discretion they do forbear to proceed to determine great Felonies.

Dal. c. 20.

But for Petit Larceny, and other small Felonies, they use to bind over the Prosecutor to the Sessions.

By Stat. 4 E. 3.
c. 2.

The Justices of Peace may proceed upon Indictments taken before themselves, or former Justices of Peace: but cannot proceed upon Indictments before Coroner, or Oyer and Terminer; but Justices of Goal Delivery may; and the Justices of Peace are to deliver the Indictments taken before them to the Justices of Goal Delivery, by Stat. 4 E. 3. c. 2.

They

They cannot deliver persons sus- Crom. fol. 9.
pect by Proclamation, as Justices of
Goal Delivery may.

In Cases of Felonies by Statute limited to be heard before Justices of Peace, they may proceed at Sessions ; and consequently may bind over Informers, and certifie Examinations at Sessions.

But such Felonies by Statute as are specially limitted to Justices of Oyer and Terminer, or other Justices, and not to them, the Justices of Peace cannot proceed to take Indictments, as upon Stat. 3 H. 7. c. 18. for contriving to destroy the King, &c. upon Stat. 33 H. 8. c. 12. Murderers in the Kings Palace ; upon Stat. 8 H. 6. c. 12. of razing or imbezelling Records ; upon Stat. 5 El. c. of Forgery ; upon Stat. 13 H. 6. c. 1. secret imbezelling goods, &c. upon Stat. 2 & 3 Ed. 6. c. 24. striken in one City, and dies in another, or accessary in another County.

But in the former cases it seems Dal. c. 20.
they may take the Examinations,

and commit the Offenders, and bind over Prosecutors.

If any Indictment be taken before Justices of Oyer and Terminer, Goal Delivery, or Coroner, they cannot proceed upon them; but upon Indictments taken before the Sheriff in his Turn, they may proceed by Stat. 1 E. 4. c. 2.

In cases of Treason, Misprision of Treason, or Premunire, regularly Justices of Peace have no Jurisdiction; yet two things may be done:

Dal. c. 90.

1. In any case of Treason, because it is a breach of the Peace, they may upon complaint imprison Offenders, take Examinations, bind Prosecutors over, and certifie their proceedings into Kings Bench or Goal Delivery.

Dal. c. 2.

2. In some cases they are enabled to take Indictments, but not to hear and determine the same, but certifie the same into the Kings Bench upon Stat. of 5 & 23 El.

1. Maintainer of Authority of the See of *Rome*.

2. Obtaining Bulls, &c.

3. With-

3. Withdrawing from Allegiance.

4. Bringing in *Agnus Dei, &c.*

A person bringing one before a Justice suspect of Felony, and refusing to be bound to prosecute, may be committed, if it appear he can testify materially.

They may Enquire of any Felony within the County, though within the Verge. 4 R. Wigg's Case.

Coroner.

Coroner.

HAth power in three Cases :
 1. To take Indictments of
 Death ; but this he can only do ~~for~~
per visum corporis, otherwise void.
 Hence

St. CP.f. 52.

1. If the Body be interred before he come, the Township amerced, and he must dig up the Body ; so if the Township suffer the Body to lie long to Putrefaction without sending for the Coroner : The like of one dying in Prison.
2. If the Coroner be remiss and comes not being sent for, he shall be fined and imprisoned.
3. He may enquire of flight and such Presentment no Traversable.
4. If the Body cannot be seen the Justices of the Peace may enquire thereof.

Note

Nota, The Record of the Coroner
great Authority ; if he Record a
Confession of a Felony by Approver,
or a Confession of breach of Prison,
than Abjuration, it shall not be Tra-
versed.

5. *Jury dnt' Coroner acquit person
tisē dnt' enquire quis occidit.* 11 E.

3. 14 H. 7. 2.

And it seems by some he hath power
to enquire of Rape, Breach of Prison.

He hath Jurisdiction upon Arms
of the Sea, where a man may see from
ende to side.

2. Concerning Appeals.

The Coroner, together with the Sheriff, hath power in the County Court to receive Appeals of Robbery and other Felonies : But then it St. PC. fo. 52.
must be of a Felony in the same County : Upon this Appeal they may grant Process till utlary ; but it seems they cannot send an *Exigent*, because prohibited by Stat. of Mag. Cart. c. 17.

Such Appeal may be by Bill ; and St. PC. fo. 64.
may be removed into Kings Bench by *Certiorari*, but it must issue both to Sheriff and Coroner, and not to Sheriff only.

It

Coroner.

It appears by Stat. 3 H. 7. c. 1.
That an Appeal of Murder by Bill
lies before Sheriff and Coroner.

3. The Coroner alone may take
the Appeal of an *Approver* of a Fel-
ony in any County.

St. P. C. f. 53. But then he cannot make Process
thereupon, but enter it in his Roll,
and send it to the Justices of Goal
Delivery, who thereupon may issue
their Process to the Sheriff of the
foreign County to take the Ap-
pellant.

4. To take the *Abjuration* of him
that acknowledges a Felony done in
the same County, or any other.

And note, That though more
Coroners than one in any County,
yet any one may exercise any of the
powers before.

But the Presentment of him that
is first taken stands.

Sheriff

Sheriff.

THE power of the Sheriff to take Indictments, was either *virtute Commissionis*, which is taken way by the Stat. 28 E. 3. c. 9.

Officij; in his Turn: wherein

1. The Turns must be held *infra St. P. C. s. 84. ensem Paschæ & Michaelis*; otherwise the Indictments there are void *per Stat. 31 E. 3. c. 14.*
2. The Indictments must be under seal of the Jury by Stat. of West. 2. 13. indented *per Stat. 1 E. 3. c. 17.* and the same for Lords of Franchises.
3. The Indictors must be of good me, having 20 s. Freehold, or 26 s. d. Copyhold; otherwise Sheriff punishable by Stat. 1 R. 3. c. 4.
4. The Turn can take no Indictment but of that which is Felony by common Law, or of such matters are particularly by Act of Parliament limited to them, and therefore

fore an Indictment of Rape void there.

5. Upon any Indictment of Felony before the Sheriff in his Turn, they can make out no Process, but must send them to the Justices of Peace who have power to proceed thereupon as if taken before themselves by Stat. 1 E. 4. c. 2.

Cont

Court-Leet.

THE Court-Leet hath in effect
the same Jurisdiction with the
Peaces ; but Presentments of Felony
before them are to be sent before
stices of Goal Delivery. 3 H. 4.

The

The means of bringing Capital Offenders to Trial.

Having considered the Court of Justice, now we come to consider the means of bringing Capital Offenders to their Trial; and that is Regularly by one of these three ways;

Appeal.

Approver.

Indictment.

And herein some things are proper to each proceeding.

§. Some things are common to them all, which come to be considered after particulars, proper to either, dispatched, *viz.*

Process.

Arraignment; and therein the Principal and Accessary.

Demeanour of the Party Arraigned;

Standing Mute.
Confessing.
Pleading and Pleas.

Declinatory,
Sanctuary.
Clergy.

In Barr,
Pardon.
Auterfuits Acquit.
Auterfoits Convict.

To the Felony.
Trial,
By Battel.
By Jury, and therein
Process against the
Jury.
Challenge.
Evidence.
Verdict.
By Peers in case of
Nobility.

N

Judg-

Judgment in the several Cases
Capital.

Execution.

Reprieve.

Falsifier.

By Errour,

By Plea.

Appeal.

A *Ppeals* in respect of the *manner* of proceeding, are of two kinds;

1. By Writ.
2. By Bill.

Touching Appeals *by Bill*, they may be prosecuted.

1. In the Kings Bench against any that is *in custodia Mariscalli*, or let to bail : they are the Soveraign Coroners.

2. In the Court before Commissioners of Goal Delivery against a Prisoner, or one let to Bail, but not of one let to Mainprize.

But if one of the Appellees absent, remove in *B. R.* by *Certiorari*.

3. By some before Justices of Peace, mod *Quære 44 E. 3. Coron. 95.*

4. Before Sheriff and Coroner, as before; and it may be removed by *Certiorari* in *B.R. 3 H. 7. c. 1.*

5. Before the Constable and Marshal, of a Felony done out of the Realm, *i H. 4. c. 14.*

In relation to the *Matter.*

Appeals are in matter,

1. *Not Capital*, as an Appeal of Maihem, which may be commenced in Kings Bench, Goal Delivery, or before Coroner and Sheriff.

This, though it be *felonice*, yet is but a *Trespass* in its Nature and Judgment.

2. *Capital*; and that either

1. Of *Treason*; but this ousted by *Stat. i H. 4. c. 14.*

2. Of *Felony*; and these of three kinds.

1. Of Death.

2. Of Larceny.

3. Of Rape.

Appeal of Death.

A N Appeal of Death is either by the Wife or Heir.

1. Appeal of Death *by the Wife* ; and therein these requisite ;

1. She ought to be a wife *de jure*, and not *de facto* only ; and therefore *ne unq; onc' accouple* a good Plea.
2. But she need not be dowable ; for if she had Elopped, or the Husband been Attaint ; yet she may have an Appeal of his death.
3. She ought to continue his Widow ; for if she marry before, or pending the Appeal, the Appeal fails for ever ; or if she marry after Judgment she cannot have Execution.

2. Appeal of Death *by the Heir*.

1. If the dead hath a wife, the heir shall not have Appeal though she die within the year : but if the Wife

Appeal.

kill the Husband, there the Heir shall have an Appeal.

2. He must be Heir by course of Common Law; this hath these Exceptions:
1. Where Heir is disabled by Attainder.
2. Where the Appeal is against the Heir; in these cases it goes to the next Heir, as if the other were dead without issue.
3. It must be by Heir that was Heir at time of death of Ancestor; for if he die within the year before, or after Appeal commenced, it is lost.

But it seems if the Heir having Judgment die, his Heir may have Execution.

4. It must be an Heir and Male; *Nullus capiatur proper Appellum fæminæ alterius quam viri sui*: But if he be Heir, and Male though he derive through

Female

Females, he may have an C. Lit.
Appeal.

5. A man above Seventy, or
an Infant, may have Ap-
peal; but no Battel waged,
and adjudged of late times
the Paroll shall not De-
murr. *Sed quære.*

But an Ideot, Monk, or Man
mute, shall have no Appeal,
neither of death, nor other-
wise.

And Note, the Appeal of death *C. P.C. 53.*
must be within year and
day after death by Stat.
3 E. 6. c. 24. striken in one
County, and dies in ano-
ther; or Accessary in one
County, to death in ano-
ther; Appeal brought where
party died.

Appeal of Robbery.

Servant robbed, Master or Servant may have Appeal.

But Testator robbed, Executors shall not have Appeal.

Villain shall not have Appeal of Robbery against his Lord; *contra eam* of death.

Two joint Owners robbed, Survivor shall have Appeal.

A Woman or Infant shall have an Appeal of Robbery.

If a man be robbed at several times, he must put all into one Appeal.

What omitted is Confiscate.

The Appeal affirms the continuation of the property. Therefore if *A.* rob *B.* in the County of *S.* and go with the Goods in the County of *D.* an Appeal of Larceny lies in the County of *D.* but not of Robbery, for that is upon a taking from the person.

If *A.* be robbed by *B.* who is robbed by *C.* *A.* may have an Appeal of Larceny against *C.* This

This Appeal may be prosecuted in a year, two, or three, if there was fresh suit; and the judging of fresh suit lies in the discretion of the Court.

And Note, This, or any other Appeal lies against an Infant, against a Monk, without naming his Sovereign, against a Feme covert without naming her Husband.

Appeal

Appeal of Rape.

Appeal of Rape.

1. Lies for the party ravished.
2. But if she consented to the Rape afterwards, then by Stat. 6 R. 2. c. it is given to the Husband; if none, to the Father; if none, to the Heir, whether Male or Female.

If she be taken in one County and ravished in another, the Appeal of Rape lies in that County where she was actually ravished.

Although by Stat. W. 1. c. 1. whereby Rape was turned into Trespass, forty days is limited for her to bring Suit; yet it being again made Felony by Stat. W. 2. c. and no time limited for it, it may be brought in any reasonable time.

Process in Appeal.

Concerning Process in Appeals,
infra Process in general, because
o the many things therein common to Ap-
. 6 Revals and Indictments.

The *Comt* in an Appeal.

1. The Plaintiff in his Appeal
must mention the place and day ;
when need not mention the hour ; and
though day be mistaken, not mate-
rial upon Evidence.

2. It sufficeth for Plaintiff to
for his count against Defendant, according
to the construction that the Law
limiteth not the Count upon the Fact.

If A. B. and C. present, and B.
only strike the mortal stroke, he may
count against them all, that they
stroke : So in Rape.

3. An Appeal by Heir ought to
new Coment.

4. In Appeal of Rape, *felonice
apuit* sufficient without saying *car-
aliter cognovit, vid. 11 H. 4. 1.*

5. In

185

Appeal.

5. In Appeal against *A. B.* and *C.* *A.* only appears, he must count against all by the better Opinion.

6. At this day but one Appeal against all Principals and Accessaries and if an Appeal be against *A.* and he is attaint or acquit, or Plaintiff non-suit, he cannot have another Appeal against *B.* But if Accessary in one County to Felony in another there several Appeals against Principal and Accessaries.

Pla

Pleas to the Writ and in Bar.

Writ of Appeal abate,

1. For insufficiency in the Writ,
wanting *rapuit*, false Latin, &c.

2. Multiplicity of Action; a second
Writ of Appeal purchased,
ending a former Writ abates; but
pending a former in the County
abates not.

But if the first Appeal by Bill be
moved into the Bench by *Certiorari*,
and the Plaintiff had appeared
ereupon, and counted, abates the
second Writ.

Nul tiel in rerum natura, as one of
the Defendants, abates *vers tonts*,

Pleas

Pleas in Barr.

*Vid. infra in eeo general Title ast
Autrefoits Convict or Acquit.*

C. PC. 98.

1. He may plead any thing whereby it appears the Plaintiff is not intituled to the Appeal *de quo v. f. pra.*

2. Nonsuit in a former Appeal after Declaration, so of a *Retraxit.*

3. The Plaintiff brought an Appeal of the same Felony against another, who was acquit or attaint his Suit.

4. Plaintiff hath released to Defendant ; but if Appeal against Dvorce, a Release or *Retraxit* as one no barr for the other.

5. If Defendant plead in Barr he may also plead over to the Felony, and it shall not be double.

1. But in case of a Release pleaded, he shall not plead over to the Felony, because repugnant.

2. In case of Villenage pleaded he shall not plead to the Felony , because Infranchisement ; yet if that barr found against him, he may plead not Guilty ; and so in any other case where he pleads in Barr without pleading over except Release.

Approver.

Approver.

C. PC. c. 65.
S. PC. f. 142.

1. **W**HAT it is to be an Approver?

A person Indicted of Treason or Felony not disabled to accuse before competent Judges, confessing the Indictment, and sworn to reveal all Treasons and Felonies he knows and then before a Coroner entering his Appeal against *participes Criminis* in the Indictment within the Realm.

2. Who may be an Approver and who not?

1. A Peer of the Realm cannot be an Approver.
2. A person Attaint cannot be an Approver; nor a person out of Prison, though indicted.
3. A Woman, Infant, Ideo *Non compos*, Clerk, cannot be Approver.
4. But a man above seventy or maimed may, but he shall not wage Battel.

5. Cler

5. Clerk Convict may.
3. In what cases ?

1. None can approve but an Indicted ; and therefore if only in Prison upon suspicion, he may indeed confess the Felony, but such Confession amounteth not to an Attainder or Conviction, though it be an Evidence , and therefore cannot approve.
2. The Appellee in Appeal cannot be an Approver.
3. The Appellee of Approver cannot be Approver , for that would be infinite.
4. Though a person Indicted approve, yet if after an Appeal be against him, the Approvement ceaseth.
5. He that hath once pleaded to the Felony cannot be Approver , but shall be hanged , for he is found false.
4. Of what Offences ?

O

It

Approver.

It must be only of the Offence contained in the Indictment, being Felony or Treason, and therefore not of another Offence, nor of a Accessary before or after to the same offence ; yet his Oath general therefore as to other Offences, it but a Detection, not an Approvement.

5. Before whom ?

Before such Judges only as can assign a Coroner, as Kings Bench Goal Delivery, Oyer and Terminer High Steward ; but not before Justices of Peace , Court Baron, or County Court.

But it is in the discretion of the Court either to suffer him to be Approver, or to respite Judgment and Execution, till he hath Convicted all his Partners.

6. How Demeasned after Appeal ?

1. After Felony confessed upon the Arraignment, a Coroner assigned and sworn in Court to discover Offenders.

2. A day prefixt, within which he is to perfect his Appeal before the Coroner, and in every of these days he must Appeal; for if he fail in any, and the Coroner record it, he is to be hanged.

The time limited to perfect his Appeal by 5 E. 2. c. 34. is three days, but that Repealed in 5 E. 2.

3. During the time limited for his Appeal, he shall be at large, and have *1 d. per diem* till his Appeal finished.
4. If he Appeal persons beyond Sea, or such as are not in *rerum natura*, and that appear by Testimony of Country, or by Return of Sheriff, *quod non fuit inventus*, he shall be hanged.
5. After his Appeal formed before the Coroner, he must repeat it *verbatim* before the Court; and if he fail
O 2 thereof,

Approver.

thereof, and the Coronor Record it, he shall be hang ed.

7. Proces in Appeal.

1. In the same County the Coronor may award Proces to the Sheriff till Exigent.
2. If Appellee be in a foreign County, then the Judge before whom the Appeal is may grant Proces, *in B. R. or Itinerant* by Common Law: and by Stat 28 E. I. *de Appellatis* the Justices of Goal Deliver may send Process into foreign County, as well to apprehend the Appellee, as a *Venire facias* to try the Issue.

8. Proceeding upon Trial.

The Appellee may put himself upon the Country, or wage Battel.

If five Appellees, and they wage Battel, he must fight them all.

If two Approvers against one Appellee, if the Appellee vanquish the first, he is acquitted against the rest though

though Appellor retract his Appeal,
or be vanquished; yet if the Offence
be within Clergy he shall have it;
and so of the Appellee.

9. Proceeding after Trial.

If the Appellor convict the Appellee, either by Battel or Verdict,
the King ex merito justitiae is to pardon him; and from the time of his
appeal till his Pardon or Conviction,
ought to have wages.

Indictments.

TH E S E things considera-
ble :

1. Where an Indictment requisite in cases Capital, and where not.
2. What the quality of Indictors.
3. Of what matters they may Enquire.
4. Before whom found ?
5. What requisite in the manner of them.

1. Where an Indictment requisite for a party to be Arraigned at the King's Suit.

1. By the ancient Law, if a man was taken in Larceny with the manner, and that brought into Court with the Prisoner, the Prisoner should be Arraigned thereupon without any Indictment. See *King P. C. f. 148.*

And such was the use of the Mannors that had Infangthef, *I. f. 29. v. 1 E. 3. 17. 17 Aff. 49.* b. *2.* *pp.* this disused.

2. If Trespass be brought *de mu-* S. PC. f. 94.
tere abducta cum bonis viri, and the
Defendant found Guilty: or if in
Trespass for Goods the Defendant
be found that he stole them; this in
the Kings Bench equivalent to an
Indictment, and the Defendant put
to answer to the Felony.

3. In some Cases upon Appeals
by Appellors or Approvers not pro-
secuting, &c. the Defendant arraigned
at the King's Suit; because it car-
ries a presumption of truth; and
therefore if the Defendant be both
Appealed and Indicted upon a non-
prosecution of the Appeal, the party
shall be arraigned upon the Appeal,
if not the Indictment. 4 E. 4. 10.

Wherein,

1. If the Plaintiff in Appeal by S. PC. 148.
Writ be Nonsuit before Declarati-
on, he shall not be arraigned at the
King's Suit. 1. Because no certain-
y. 2. The Writ may be at ano-
thers Suit, but if it be by Bill, ei-
ther by Appellor or Approver, it
seems he shall, because the certainty
appears; therefore in the former

Case, if there be no Indictment against him, he is dismissed.

2. If the Plaintiff release his Appeal after he hath commenced it, the party shall be arraigned at King's Suit: But if before it was commenced, then not; because it was never well commenced.

3. If the Plaintiff or Approver after Appeal commenced, confess it false, or take to his Clergy, or waive his Appeal, yet arraigned at the Suit of the King: But if the Approver after Battel joyned do in the field confess it false, the Appellor hang'd and the Appellee discharged, because amounts to a vanquishment.

4. If the Appeal abate by Act of the Plaintiff, as taking Husband; or act in Law, as death; Appellee arraigned at the King's Suit: But if it abate by insufficiency in the Appeal as by false Latin, Misnomer, or because Plaintiff disabled to commence Appeal, as Utalary of Felony, or Trespass; or the year and day past; or Plaintiff not Wife or Heir; Defendant, not arraigned upon Appeal, but may be Indicted.

5. If the King pardon after Battal joyned in Appeal by Approver, Arraignment at King's Suit, but the Appellee discharged.

And note, where the Prisoner ar- S. P. C. 104.
signed upon the Appeal, a *Cesset*
processus entred upon the Indict-
ment.

The return of the Sheriff of Re- S. P. C.
the or Escape of a Felon, not suffi-
cient to put the party to answer the
Felony.

2. The second thing considerable
the quality of *the Indictor*.

Concerning Indictments in Leets
and Turns, *v. ante* upon Stat. W. 2.

13. 1 E. 3. c. 17. 1 R. 3. c. 4.
E. 4. c. 3.

There is a general Statute that St. P. C. s. 33.
refers to all Indictors, as well in case
of Felony as Treason, 11 H. 4 c. 9.
which requires

i. Indictors not to be

1. Persons fled to Sanctuary
for Felony or Treason.

2. Not outlawed.

3. Not Indicted or Attainted.

4. Not by Conspiracy.

2. That

Indictments.

2. That the Indictors be the King's Liege people.
3. Returned by the Sheriff, or Bailies of Franchises.
4. Not at the nomination of any person.

And all Indictments taken contrary void.

Hence it follows.

1. That the Prisoner upon his Arraignment may plead this matter or any point of the Statute, and may plead over to the Felony. *Vide Scarratt's Case.*

2. Though there be twenty of the grand Jury, yet if one was outlawed or taken at the nomination of another, it avoids the whole Indictment.

*Four 1 may 16
form 16 pa
mbl of 15. July*

By Stat. 3 H. 8. c. 12. Justices of Goal Delivery, or of Peace, where of one of the *Quorum*, in open Sessions may reform the Pannel of the Grand Jury, by putting in and taking out Names, and the Sheriff to return the Pannel so reformed.

But this takes not away the former Statute of 11 H. 4. nor alters

By Stat. 33 H. 6. c. 2.

Special provision is made for the
quality of the Indictors in *Lancashire*.

3. Of which things they can Enquire.

Regularly they can Enquire of
nothing but what ariseth within the
body of the County for which they
are returned,

And therefore if an Indictment
for scandalous words, or other mat-
ter transitory be found upon Not
guilty pleaded thereunto, if upon
evidence it appear to be spoken in
other County, the Defendant is
not guilty.

And therefore where stroke was
in one County, and death in ano-
ther, he could not be Indicted where
the party died.

But for a Nusance in one County
of another, a Jury of the County
where Nusance is committed may
indict it.

But divers Statutes have Intro-
duced an alteration of the Law in
some Capital Cases, 23 H. 8. c. 15.

Trea-

Treasons, Felonies, Robberies, Murders, and Confederacies upon the Sea may be enquired, tried, heard determined, and judged in such Shires and places as shall be limited by the King's Commission to be directed for the same.

A Treason done out of the Land it hath been held that it may be enquired of and tried where the Offender had lands; but to avoid the Question by Stat. 35 H. 8. c. 2. a Treasons and Misprisions, or concealments of Treasons done out of England, may be enquired, heard and determined by the Justices of the Kings Bench, by persons of the County where the Bench sits, or before Commissioners, and in such Shires as shall be appointed by the King's Commission, by good men of the same Shire, as if the Treason &c. had been done in the same Shire where inquired.

Upon this Statute.

St. P. C. f. 71. 1. If the Bench remove after Indictment into another County, the Trial shall be by persons of the first County.

2. Th

2. The Kings writing his Name
to the Commission, or putting his
Signature to the Warrant, suffici-

at.
3. *Ireland* is out of the Realm to
is purpose.

These Statutes stand unrepealed C. PC. s. 24.
Stat. of 1 Ma.c. but the Stat. of
H. 8. c. 4. for trial of Treason in
Wales repealed by 1 Ma.

Again, by Stat. 2 & 3 El. c. 24.
man stricken in the County of D.
es in the County of S. or Accessa-
in one County to Felony in ano-
er County, may be indicted and
ied in the County where the death
as, or Felony committed by the C. PC. 49.
principal ; but it must be laid ac-
cording to truth.

If Enquest conceal any matter
presentable before Justice of Peace,
they may Impannel Inquest to en-
quire of such Concealments, and
perce the Concealers, by Stat. 3 H.

c. I.

4. Before whom found.
Of this before.

5. The

Indictments.

5. The form of Indictments.

1. By Statutes :

4 H. 4. c. 2. *Insidiatores viare
& depopulatores agrorum,*
be omitted in Indictments
and if inserted, yet Clerg
not thereby taken away.

37 H. 8. c. 8. Indictment ne
to be quashed for want of the
words, *viz. gladiis, baculis,
cultellis.*

2. At Common Law :

1. Want of certainty vitiates
want of year, day, and place.

Indictment for Escape of one t
ken on suspicion of Felony, witho
shewing what Felony, *Male.*

Indictment for receipt of a Fel
without shewing who received, *ma*

Indictment *ad magnam curiam
Letam, Male.*

Indictment for making Alchim
ad instar pecuniae Regis, witho
shewing what money, *Male.*

Indictment *quod communis ma
factor*, without shewing where
Male.

Indictment *quod cœpit*, or *fura*

, without saying felonice ; *abduxit*
rum, without saying *cepit* ; or *car-*
vianus *litter cognovit*, without saying *Ra-*
m, t- *it* ; or *burgariter*, when it should
mens *Burglariter* ; or if *Felony before*
Clerg *stice of Peace*, without saying
y. *non ad diversa felonias, &c.* or
it n- *fore the Major of London without*
of th- *ing & Coronatore* ; or of a mur-
alis, *er with a Gun, without saying per-*
sit Male.

Indictment supposing the stroke
riates *Augusti, death* 2. *Augusti, & sic*
ne t- *murdavit* 1. *Augusti, Male.*
itho *at sic murdravit modo & forma*
ed, or præd' 2. Augusti, Bene.

Indictment *quod dedit mortalem*
Fel *angam circa pectus, Male* : but in
l, ma *istra parte ventris circa umbelicum,*
am *ne.*

Indictment *de morte cuiusdam* *Kelving 39: a*
lchin *noti, or felonice cepit bona, &c. cu-* *Passenger may be*
itho *dam ignoti, or domus & Ecclesiae, diel, as for his*
time of vacation: good. *own Goods —*

Indictment of Poysoning with se-
ere *veral sorts of poyson, without shew-* *C. PC. c. 62.*
fura *g of which he died: good.*

6. Proof upon Indictments.

In case of Treason and Misprision by the Stat. i E. 6. c. 12. & 5 E. c. 11. there ought to be two lawful Accusers, that is, witnesses upon every Indictment.

C. P. C. 24.

An Accuser by hearsay is no lawful Accuser within this Statute.

The necessity of such proof upon Indictment of Treason is not taken away by Stat. i E. 1. 2. 1 & 2 P. & Ma. c. 11. but only in the case of counterfeiting Coin.

St. P. C. 164.

But these Witnesses need not be present with the Indictors, but they may send it to them in writing.

Process.

NOW we come to those Proceedings that for the most part are common both to Appeals and Indictments. And

i. Of Process.

1. Upon an Indictment or Appeal *of Death* but one *Capias*, and then *Exigent*: but in case of Robbery, then by Stat. 25 E. 3. c. 14. two *Capias's*, then *Exigent*; but this Stat. extends not to death.
2. But Indictments or Appeals of Treason, or any Felony, or Trespass *against a person of another County* after one *Cap.* a second *Cap.* with Proclamations, shall be granted to the Sheriff of that County wherein he is supposed to be conversant before an *Exigent* shall issue by Stat. 8 H. 6. c. 10. And

P upon

Process.

upon this Statute Process shall go to a County Palatine; and if in the Indictment he be styled *nuper d. D.* and so in several Counties, the second Cap. shall go to every County.

S. P.C. f. 67.

3. In Appeal or Indictment *against Principal and Accessary*, by Stat. W. I. c. 12. Process of Utlary must stay against Accessary till Principal attaint.

But if it be an Appeal by Writ which is general till Declaration, the Plaintiff must at his peril distinguish the Process; for if he take the Exigent against all, he must Count against all as Principals.

An Appeal *against divers*, one appears and pleads to the Writ, or in Barr, which goes to all, Process of Utlary shall stay against the same till Plea determined.

An Indictment or Appeal may be removed in *B.R.* by *Certiorari*, but it must accord with the Appeal.

Upon an Appeal removed by *Certiorari*, the Plaintiff is without day; and to compel the Plaintiff to proceed, the Defendant may take out a *Scire Facias*, and upon two *Nihils* or a *Scire Feci*, and default, Defendant discharged.

But the Plaintiff upon such Appeal removed, may have *Capias & Exigent*.

If the Defendant comes in by *Capias*, and after appearance make default, a new *Capias*; if upon *Exigent*, a new *Exigent*; and upon second appearance shall plead *de novo*, for the first Issue and Inquest is *sine die*.

Arraignment.

1. **I**N what manner a Person is to be Arraigned?

The Prisoner, at the time of his Arraignment ought not to be in Irons.

2. Where arraigned upon several Appeals or Indictments.

If a man be indicted or appealed of Robbery or Death at the Suit of one, he shall be Arraigned and Tried at the Suit of another, because they have several interests in the Judgments.

N.B. Keeleyng: And now the same Law is of an Indictment of Robbery, because by Stat. 21 H. 8. c. 11. the party is to have Restitution.

But if the Appeal by one be not commenced till after an Attainder at the Suit of another, he shall not be Arraigned upon the other Suit;

But if the first Attainder be pardoned, he shall be Arraigned upon the Goods omitted in the Indictment.

the second Appeal commenced after
the Attainder.

But after an Attainder of Felony,
he may be Arraigned for Treason for
the King's Interest.

By the Common Law, a Clerk
convict should have answered all Fe-
lonies, and were acquit or convict
at the Suit of others.

But this was remedied by Stat.
25 E.3. c. 4. *pro Clero*. And therefore
after that Stat. the Clerk convict
and delivered to the Ordinary, was
discharged of all former Felonies
whereof he was not Arraigned before
Clergy; and that although those
other Offences were not within
Clergy. *Dyer 214.*

But now by Stat. 8 El. c. 4. after
Purgation, and 18 El. c. 7. after
burning in the hand, he shall be put
to answer former Felonies upon Ap-
peal or Indictment. *Vid. infra in au-*
erfoits acquit & convict.

3. Concerning the *Arraignment of
Principal and Accessory.*

Arraignment.

1. Who shall be said an Accessary before, after.
2. How the Proceeding shall be against them upon their Arraignment.

Prin-

Principal and Accessory.

WH^O an Accessory?

1. In Treason no Accessaries, but all Principals; But a C. P.C. f. 138. Procurer before, or a Receiver knowingly after, is guilty as Principal in High Treason.
2. Where an Act of Parliament *ParL* 223 makes a Felony, it doth incidently make such Accessaries as would be Accessaries C. P. C. f. 59. before or after to a Felony at Common Law; as in Case of Buggery, Rape, &c.
3. The Accessary cannot be guilty of Petty Treason where the Principal is but Murder.
4. If divers come to commit an unlawful act, and be present at the time of Felony committed, though one of them only doth it, they are all Principals.

Plano. - (97:)

So if one present move to
other to strike : or if one
present did nothing, but
yet came to assist party
need ; or if one hold up
party while the Felon
strikes him ; or if one pre-
sent deliver his weapon
the other that strikes ; for
they are *presentes, auxilia-
tes, abettantes, or conforta-
tes.*

S. P. C. f. 40.

But if one came casually, not
the Confederacy, though he hindered
not the Felony , he is neither
Principal nor Accessary, although
apprehend not the Felon.

5. In some cases a person *absent*
may be Principal.

*4 Rep. 44.
Vaux's Case.
C. P. C. 138.*

1. He that puts poison into anything to poison another, and leaves it, though not present when taken. And so it seems are all that are present when the poison is so infused and consenting thereto.

2. If upon the same Ground, or in the same House, though not within view of the Fact, when man-

com

Principal and Accessary.

2

one to do an unlawful act : See
before Lord *Dacres Case*, and *Pnd-*
Case in Murder and Robbery.
3. By special Act of Parliament,
upon the Stat. 3 H. 7. c. 2. 8 H. 6.

2. Accessaries *before* ; he that
commandeth or assenteth to the
committing of a Felony, and is ab-
solved at when done.

1. In Manslaughter there can be ^{4 Rep. Bibith's} Accessary before, because done *Case.*

without premeditation.
2. Where the Execution varies C. PC. f. 57:
either in the Command in the person
of A; as a command to kill A. and
kill B. or in the nature of the Of-
fence; as Command to rob A. as he
goes to Market, and he break open
a House and robs it, the Comman-
der is not Accessary.

3. But a command to poison J. S.
and he shoots him; a command to
fusill or beat J. S. and he beats him
to death, the Commander Accessa-
ry.

4. If A. command B. to kill C.
before the Fact A. repents, and
coun-

Principal and Accessary.

countermands his command, yet if he kills him, *A.* is not Accessary.

5. If *A.* poison an Apple, and deliver it to *C.* to deliver to *D.* *C.* not knowing delivers it, Murder in *A.* but no Offence in *C.*

3. Accessary after.

St. P. C. 41.

1. A receipt of stollen Goods makes not Accessary, unless he receive Thief. *On receive le biens accessoires felon.* 9 H. 4. 1.

2. Every Receipt to make an Accessary must be knowing him to be such.

But if a man be attaint of Felony in the County of *A.* the Law presumes notice thereof in the same County : therefore the Receipt of him in the same County seems Accessary ; *Contra* if in another County. *Videtur cognitio requisita in qua.*

3. Receipt of a Felon, that has given bond to appear at Session &c. not Accessary.

4. Relieving a Felon with money, victuals, horse for his journey known

yet being, Accessary : but if he be
in Prison then lawful. *Dal. c. 108.*

5. A Brother receiving his Bro-
ther may be Accessary, or a Husband
Wife, but not the Wife of her
husband.

6. A man may be Accessary to an
Accessary : And

The same man may be Principal
and Accessary where Felony done
divers.

7. But sending a Letter in favour
of a Felon, instructing him to read,
wishing to labour witnesses not to
bear, not revealing a Felony in-
Felon fled, permitting a Felon to escape
without Arrest, makes no Accessary :
sicut contempt.

8. Accessary cannot be unless a
Felony committed ; therefore *A.*
B. dangerously, *C.* receives
B. dies, *C.* is not Access-

9. Si felon vient al meason l.
que suffer lui d' aler hors nest Felon
nisi prist mony ou autre chose pur
suffer escape. 9 H. 4. I.

Arrainm

rainment of the Principal and Accessary, and things Observable therein.

If the Principal be acquitted, S. P. C. 47.
or be convict only of Man- C. PC. 139.
ghter, or se *Defendendo*, or be- 4 R. Steyer's
Attainder hath his Clergy, or ;² *Anno c. 9.*
ardoned, or die, the Accessary *alors Rij:*
not be Arraigned; otherwise if *W. s. H. 121:*
Attainder.

If the Principal be attaint at
Suit of the King, the Accessary S. PC. 47:
not be Arraigned at the Suit of
party. *Issint si soit attaint d' an-*
alony.

If Principal stand mute, Accessary, ^{c. 9,} *Anno c. 9:*
not Arraigned. V. Contra 2 R. 3. *contra ipsam.*

3 H. 7. I.

The Exigent shall not go out St. PC. 46.
till Accessary till Principal at-
by Stat. W. I. c. 14.

5. Where

thaw. P.C.
222
322:

Arraignment of Principal, &c.

5. Where Principal appears ~~not~~ he shall be put to answer but he shall not be tried till Principal attaint or appear, unless he waives for he may wave the benefit of the Law.

6. If he be Indicted as Accessory to two, and one of the Principals appears and is convicted, the Coroners may, if they please, try the Accessory; and if he be found Accessory to him that is attainted, he shall be condemned; if not found Accessory to him, yet he may after be Arraigned as Accessory to the other when he appears.

c. West. I. c. 14.

7. If Principal and Accessory appear and plead to the Felony, they may be tried by the same Inquest, but the Principal must be first Convicted, and have Judgment passed against Accessory, and the Jury shall be charged that if they find Principal not guilty, they shall find the Accessory guilty.

8. If Principal be erroneously attainted, yet Accessory shall

St. P. C. 47.

*Play Com. 100.
Gillies Case.*

rs make advantage thereof, but be Answered.

Prin. 9. If Murder or other Offence ^{hinc p. c.} were in one County, and Acces-
sary in another by Stat. 2 E. 6.

Prin. 1. If Accessory be in Middlesex, C.P.C.p. 49
where the Kings Bench sits, and
the Principal in another County, the
Accessories Bench may try the Accessory.

Prin. 2. Certificate in such case shall
be upon a *Certiorari* or Special Writ,
need be, formed upon the Matter,
not by Precept, under their
seals, in their own Names.

Ibid.

Prin. 3. The High Steward is within
the Act.

Prin. Accessory al Petit Larceny. 3 Cr.
o. nemy al Homicide per infortun.

E. 3. Coron. 116.

Prin. Novel felony fait per Stat. videtur
Accessory nisi specialment enact,
V. Dy. 88. Stam. 44.

Prin. pur Trial d' Accessory in for-
n County. 2 E. 6. cap. 24. Dy.

Acquit

Acquit come Principal enemy arrain

come Accessory : mes acquit come Ac
cessory arrain come Principal.

Mute, Paine fort & dure.

V.Stat.West.1.
cap. 12. & ēē
inquiry de of-
fence dnt'
Pain fort &
dure.

NO W we come to the Demea-
nor of the Prisoner upon his
ppearance :

And thereupon either,

1. He stands mute.
2. He pleads.
3. Or he confesseth the
Fact.

1. What said a *standing mute*?

This of two kinds :

1. When he answers nothing at C.West.1.c.12.
and then it shall be enquired S. PC. f. 150.
whether he stand mute by malice or
the act of God.

If it be by the act of God, then
the Felony shall be enquired of, and
whether he be the same person, as if
he had pleaded not guilty.

If by malice, or if the Prisoner
h cut out his own tongue, then
he shall have Penance.

Nota, *Si ad unfoits pled tal Felony*

Q licet

Mute, Paine forte & dure.

licet apres estoit mute, ser. trie. 15 E

4. 33.

*Viez Pere estoit mute aver. Pe
nance. 7 Car. Lord Castlehaven
Case.*

2. When he pleads, but not effectually ; as when he answers not directly to the Fact, or concludes not upon the Country, then if the cause be probable, he shall be put to Penance. C. P. C. p. 227.

Nota, *Si Chall. ultra 35.* Standing mute. V. C. P. C. fo. 227.

2. What *the consequent* of standing mute ? 1. *forfeit biens.* 14 E. 4. 7.

1. In Treason it is a Conviction.

2. After Attainder and ask't why he can say why no Execution, standing mute he shall be Executed.

3. In Appeal standing mute, Judgment against him to be hanged. C. tra 14 E. 4. 1.

4. Upon Stat. 33 H. 8. c. 2. Felony within the Verge, Offense standing mute Judgment against him.

5. But in other cases of Felony,
Paine fort & dure, and forfeits
goods.

1. Remanded to Prison.
2. Lie naked in some dark Room
with hands and legs extended.
3. Weights increased.

Q. 2

Pleas.

Pleas.

IF the Prisoner plead, it is either

1. Declinatory.

Sanctuary.

Clergy.

2. Or to the Felony :

1. Demurring.

2. Pleading in Barr.

3. Pleading the general Issue.

Declinatory Exceptions.

1. *Sanctuary* and the Consequen-

Abjuration ousted by Stat. 21 &
c. 28.

Clerg

Clergy.

Clergy wherein

1. Who shall have benefit of Clergy?
2. In what Cases?
3. At what time?
4. Who the Judge?
5. What the Consequent?

1. Who shall have Clergy, and who not?

1. A blind man shall not have his Clergy. *Nec Jew, nec Turk: contr. de Greek ou home excommeng'.*
2. A woman cannot have the benefit of Clergy.

Provision by Stat. 21 Jac. c. 6. C. E. C. c. 124.
that for stealing Goods under 10 s. without Burglary or Robbery, &c. shall be burnt in the hand for the first Offence.

3. Bigamy ousted of Clergy by *stat. de Bigamis 4 E. I.* but restored to it by *stat. 1 E. 6. c. 12.*

Cestuy que abjure aver. Clergy apres son returne. 8 H. 8. Kel. 186.

Cestuy que ad unfoits Clergy naver auer foits nisi deins orders, 4 H. 7. c. 17.

2. *In what cases?* some things promised in general.

I. By Stat. 25 E. 3. c. 4. *pro Clero.* Clergy allowed in all Treasons or Felonies except Treason against the King; so that after that Statute, there was Clergy in all Cases but

*No Clergy is allowed
in the way of 21
Ed 3 c 4: except
Treason, & Clergy.*

*Treason,
Sacrilegide.*

2. Consequently wheresoever Clergy is not allowable in any other cases, it is taken away by some Act of Parliament.

3. Consequently where any Felony is made by a new Stat. Clergy is to be allowed, unless expressly taken away.

4. Con-

4. Consequently where by any special Act of Parl. Clergy is taken away in any Offence, the Indictment ought to bring the Case within the Statute. As upon the Stat. 3 & 4 Ph. & Ma. c. 4. the Indictment must run *Malitiose*; so upon Stat. 8 El. c. 4. it must be *clam* & *secrete*; in case of Murder, *ex malitia præcogitata*, otherwise Clergy allowable.
5. Consequently a Statute taking away Clergy from the Principal, doth not thereby take it from the Accessories before, unless specially provided for.
6. Where Clergy is allowable, it is to be allowed though the party be Convict by Confession, Verdict, or stands Mute, or challenges peremptorily above 35.

Clergy.

2. Particular Offences where Clergy, and where not.

1. High *Treason* no Clergy.
2. In Petty *Treason*.

Principal oust of Clergy is convict by Verdict or Confession by *Stat. 23 H. 8. c. 1.* revived by *5 & 6 E. 6. c. 10.* and by *Stat. 25 H. 8. c. 3.* though standing Mute, no directly answering, or challenging above twenty.

Not oust of Clergy in Appeal unless Convict by Verdict or Confession.

Accessaries before the Fact maliciously, oust of Clergy in all cases by *4 & 5 Ph. & Ma. c. 4.*

3. Wilful *Murder* of Malice prepense, Principal oust of Clergy in all cases by *Stat. 23 H. 8. c. 1. 25 H. 8. c. 1 E. 6. c. 12.*

Accessary before maliciously ousted in all cases by *4 & 5 Ph. & Ma. c. 4.*

4. Arsf

4. *Arson of Houses, or Barns full of Corn, Principal oust of Clergy in all cases, viz. sur Conviction by Verdict, or Confession, by 23 H. 8. c. 1. upon standing Mute, not direct answering, challenge above twenty, by Stat. 25 H. 8. c. 3.*

But Utlary stands subject to Clergy.

Accessary ousted of Clergy in all cases by 4 & 5 Phil. & Ma. c. 4.

5. *Simple Burglary.*

Principal ousted of Clergy if utlawed, Convict by Verdict, or Confession.

Not ousted if stand Mute, challenge above twenty, or not directly answering.

Accessary before or after not oust of Clergy.

6. *Burglary, any person being in the House, or put in fear or dread :*

Prin-

Clergy.

Principal oust of Clergy in all cases, *viz.* by Stat. 1 E. 6. 12. in case of any Conviction or Attainder; and by 25 H. 8. c. 3. revived by 5 & 6 E. 6. c. 10. it takes away Clergy where above twenty challenged.

But Accessaries not ousted of Clergy.

7. *Robbery*, which hath several Qualifications, with these Considerations:

I. From the Person

Without putting in fear, but *de
& secrete*: by Stat. 8 El. c. 4. Principal in all cases oust of Clergy, Accessary not oust.

With putting in fear, Robbery or near the High-way.

I. Principal in all cases oust Clergy, *viz.* if Appeal Indictment by 23 H. 8. 1. Convict 23 H. 8. c. 1. Attaint 1 E. 6. c. 12. Mutual Challenge above twenty Stat. 25 H. 8. c. 3. revived by 5 & 6 E. 6. c. 10.

2. Accessary before oust of Clergy in all cases by 4 & 5 Ph. & Ma. c. 4.

2. From Dwelling house ; and
of three kinds :

1. Owner, wife, or servants
being in the house, or put
in fear, here Clergy.

1. As to Principal,taken away
by 23 H. 8. c. 1. in case of
Conviction by Verdict, or
Confession, and by 25 H. 8.
c. 3. revived by 5 & 6 E. 6.
c. 10. in case of standing
mute,challenge *ultra* twen-
ty, not directly answering :
Also to a Conviction in a
foreign County, if it appear
by Examination not to be
within Clergy in the same
County.

2. Accessary in all cases oust of Clergy by Stat. 4 & 5 Ph.
& Ma. c. 4.

Nota, A Stranger in the house
brings it not within Sta-
tute.

Clergy.

2. Robbing any person by day or night, any person being in the same house and put in fear.

Principal oust of Clergy by
1 E. 6. c. 12. in all cases, by challenging twenty; and by
Stat. 5 & 6 E. 6. if in foreign County Clergy upon Examination taken away.

Accessaries, Clergy taken away by 4 & 5 Ph. & Ma. c. in all cases.

3. Robbing any person in his Dwelling-house, the Owner, his wife, or children being in any part of the house, or within the precincts thereof; though there be no putting in fear. At this extends to Booths Fairs.

Principal oust of Clergy by
5 & 6 E. 6. c. 9. in all cases where the Offender is found guilty.

Principal thereof in other cases shall have Clergy; as in standing mute, challenge *ultra* twenty.

Accessary oust by Stat. 4 & 5 Ph. & Ma. c. 4.

4 Robbery to the value of 5 s. of any Dwelling-houſe or Out-
houette thereunto belonging, though
one in the house, by Stat. 35 El. c. 12.

Principal ouſt of Clergy in case Conviction, not of standing
mute.

Accessary ſhall have Clergy.

Un enter in le lodging Sir H. Hungerford parcell de Whitehall, nul personne eant in lodging, mesme in autre part Whitehall & infreint un chamber pris biens : Rule per advise de fices, 1. L' Indictment doit estre infreindre de meason de Roy vocat' Whitehall & pur Embleer les biens H.H. divers persons esteant in le son : Car nient semble al Chamberonne de Court, lou chescun ad seve- property. 2. Que ceo fuit deins le t. 5 & 6 E. 6. & L' Enditement accordant. 3. Que in Inditement

fur

*fur Stat. 23 H. 8. vel 5 & 6 E. 6. do
estre actual breaking & auxi Robber
4. Que si laron enter in meason
doores open, & infreint Chamber,
prist biens, est deins le Stat. 5 E.
d' ouster lny de Clergy.*

8. Larceny without any of the Circumstances.

Horse-stealing oust of Clergy, b
1 E. 6. c. 12. 2 & 3 E. 6. c. 33. Pri-
cipal oust in all cases ;

Accessary ousted in no cases.

But other Larceny, not being
Robbery nor Cut-purse, have Cler-
gy.

9. In Rape, Clergy oust by St
18 El. c. 7.

10. Though the Offence be within Clergy, yet if he had formerly
been Clergy, and were burnt in the Hand, the Stat. of 4 H. 7. c. 13. oust
him of Clergy, unless he were a person in Orders, and then he must
produce his Certificate presently, by a time prefixed.

And see the Stat. 34 & 35 H.
c. 14. for the manner of the Cer-
tificate of such Convictions and other
Attainders.

And though Stat. of 32 H. 8. c. 1.
put men in Orders in the same
condition with others, in reference
to Clergy; yet as to this point of
Stat. 4 H. 7. the clause of the
Statute 1 E. 6. c. 12. doth give a
person in Orders his Clergy the se-
cond time in all cases, but in case of
Challenge above twenty; 2. Out-

3. When Clergy shall be allowed.

1. Now the use is not to put
the party to challenge his
Clergy till he hath pleaded,
and the Inquest thereupon
taken:

1. For advantage of the party, if acquitted.
2. For advantage of the King for forfeiture, if Convict.

2. It may be allowed in Dis-
cretion, though the party
challenge not.

Allowed under the Gallows,
or where Judgment of pain
fort & dure given, or where
challenge above twenty.

Clergy.

V. Crom. Jur. 126. Allow sou
Gallows per Just. B. R. mes ne
Goal Delivery : mes poent apres Jud
ment devant adjournment, Dy. 205.

Licet Ordinary return non legit,
est record, & repty al autre Session
& tunc legit, avera benefit de ceo, D
202. 34 H. 6. 49. Coron. 20.

4. The Judge.

The Ordinary is but Minister, the
Judge at Common Law is the Judge
when and where to allow it, and
the Reading, 9 E. 4. 28. Cor
32.

5. What the Effect of Clergy allowed :

I. In ancient time the Consequa
was delivery to the Ordinary, either
to make Purgation, or *absque Pur
gatione*, as the case required.

But by Stat. 18 El. c. 7. now o
ly burnt in the Hand, which ha
these effects;

I. Enables the Judge to de
ver him out of Prison; b
yet if he see cause, he m
detain him till he find Su
tjies of good behaviour.

And by the *Stat. 3 H. 7. c. 1.*

If Clergy within the year,
he is to be bailed or com-
mitted at discretion, till
the year past.

2. It gives him a Capacity to *Foxley's Case,*
purchase Goods, and retain ^{5 Rep.} the profits of his Lands.

But the Goods he had at the
time of the Conviction are
forfeit.

3. It restores him to his Cre-
dit. *Hob. 377. Searle's
Case.*

*Le Stat. 25 H. 8. que toll Clergy
persons arrain in forrein County sur
mination extend solment al tiels
nies d'ont Clergy ouſt per Stat.
H. 8. & nemy per ſubſequent Stat.
our ceo rule in Anne Coles Case,
ſeme infreint meaſon in County de
day time, & priſt biens South
de 10 s. & eux import in Coun-
de D. & la arraine, el ferra arſe
aine: quia nul mifer in pavor
require per le Stat. 23 H. 8.
robbery de value de 10 d. & import
forrein County & la arrain eſt Pe-*

R tit

Clergy.

*tit Larceny. 2 Jac. Moores Rep. qui
Le Stat. 25 H. 8. extend solment
cestuy que demand Clergy, que nest
casé de Pet. Larceny.*

*Indite de Robbery in quadam v
pedestri, avera Clergy: Car le Si
parle de Robbery in vel prope alta
viam regiam. T. 38 Hen. 8. Moors*

Pleas to the Felony.

D Emurrer.

2. Pleas in Abatement and Barr.
3. The General Issue.

i. For Demurrer.

It amounts to a Confession of the Indictment, as laid ; and therefore the Indictment good, Judgment against the Prisoner, and Execution.

2. For Pleas in Abatement.

If Prisoner plead *Misnomer* of his name unto an Appeal, it goes in Abatement ; But in case of Indictment he shall be put to answer the reason or Felony.

But Misnomer of the Christian names goes in Abatement ; and if he confessed by the King's Attorney, or found, the Indictment falls.

H. 4. Coron. 88.

But then he must give his true name, and by that Name he may forthwith Indicted.

Pleas in Barr.

Auterfoits acquit.

Auterfoits acquit :

1. If a person be acquitted upon an insufficient Indictment or Appeal yet upon a new Indictment he may be arraigned for the same Felony
4 R. Vaux's Case, licet Judgmen done.

2. *Auterfoits acquit* of one Felony, no Barr to an Indictment or Appeal of another Felony, &c though committed before the Acquittal.

3. *Auterfoits acquit* as Principal no Barr to an Indictment against him as Accessary to the same Felony after; But it seems he cannot be later Indicted as Accessary before
Stampf. 105.

4. In an Appeal of Death or other Felony, *Auterfoits acquit*, upon a Indictment for the same Felony, without a good Barr in all Cases; therefor

fan Appeal was pending, the Court would surcease the Arraignment of the Prisoner upon an Indictment till it was determined: Or though no Appeal pending, yet in case of death, would surcease till the year past.

But at this day *Auterfoits acquit* in an Indictment of Death no Barr to an Appeal, by *Stat. 3 H. 7. c. 1.* for the Prisoner notwithstanding the Acquittal; but in other Appeals it stands a Barr to an Appeal.

5. But *Auterfoits acquit* in an Appeal, Barr to an Indictment of the same Felony.

1. Unless the Appeal be Erroneous in Substance.
2. Or unless the Appeal be by a wrong Person.
3. Unless the Acquittal be by Battel; for in these cases he may be Indicted again.

6. He that pleads this Plea, need not have the Record *in poigne*, because it goes in Barr. *3 E. 3. B. Co. m. 217.*

R 3

7. Though

7. Though there be *Variance* between the Indictment, &c. yet if it be such as may admit an *Averment* to be the same, yet it may be pleaded *Variance in the Name* if *Conus p
un name & auer.*

Variance in the day of *Felony* supposed to be committed.

Variance in the place, but by the Opinion of 4 H. 5. acquit of *Larceny* in one County no Barr in another.

*Variance in L'offence auerfoits ac
quit, attaint de murder ou manslaug
ter turr. Pet. Treason,*

Auterfoits Convict or Attaint.

1. Where a Barr to the same Felony.

1. *Auterfoits attaint* of the same Felony in an Appeal Barr to an Indictment ; for the Effect is obtained, the death of the party ; But *vid.* no Barr in Appeal.

C. PC. 213.

2. *Auterfoits convict* by Verdict or Confession of Manslaughter in an Indictment, and had Clergy , Barr in Appeal , though it be of ^{4 Rep. 45.} *wigg's Case.* Murder , for the fact the same in both, though the offences differ in degree.

Auterfoits acquit sur insufficient entitement, & nul Judgment done, nest lea: mes auterment est si Judgment sit done tanque ceo revers. *Vauxe's Case,* 4 Rep.

2. Where a Barr to an Arraignment for another Offence.

Auterfoits Convict.

1. *Auterfoits attaint of Felony* is no Barr to Arraign him of Treason committed before the Felony for the King's Interest.

And it seems if the Treason was committed after the Felony, then he shall be Arraigned of the Treason for the Offence is different.

2. *Auterfoits attaint of one Felony* barr to an Arraignment of Felony: but this hath these *Exceptions*:

1. Where the first Attainde is pardoned, there he may be Arraigned for the former Felonies though committed before.

2. In case of Appeal he shall be Arraigned at every one of their Suits, notwithstanding he be Attaint in one Suit.

The like it seems upon Indictment of Robbery, because by the Stat. the party is to have restitution. 3. A.

3. Auterfoits convict, and had Clergy after Stat. 25 E. 3. c. 5. had been a barr to an Arraignment for another Felony, though not within Clergy. Dy. 214.

But now by stat. 8 El. c. 4. after Purgation, and 18 El. c. 7. after burning in the Hand, he shall be put to answer former Felonies not within Clergy, or for any offence after Clergy allowed.

And note, that he that pleads a Plea in barr to an Indictment or Appeal that confesseth not the Felony, shall plead over to the Felony; otherwise if it confess the Felony; as Pardon, or Release.

Pardons.

3. Pardons

Are either of Course and Right; such are :

1. For a person Convict of Manslaughter, or *se defendendo*.

2. An Approver that vanquished the Appellee.

S. PC. 102.

Pardons of Grace.

1. Some things requisite to their allowance by Statute.

1. By Stat. 13 R. 2. c. 1. Pardon of Murder, Rape, or Treason must be especially expressed in the Pardon, otherwise it ought not to be allowed in such cases. *Vide si extat al Petit Treason & Accessaries*, 22.

4. 19. Lam. 293.

2. By Stat. 10 E. 3. c. 2. there must be Surety of good abearing, otherwise the Charter void; but a special *Non obstante* may prevent it.

2. Mat

Matter at Common Law considerable.

1. Charter of Pardon no barr of Appeal: and if the party be uttered in Appeal, and the King parson, he shall have a *Scire Facias* against the Appellor, who may pray Execution notwithstanding such Pardon; but if returned *Scire feci*, and appears not, then Appellee shall be upon the Pardon be discharged.

2. Pardon of all Felonies is no barr to Execution, if the Felon be Attainted; yet an Exception of all Burglaries excepts the Burglary for which the party is Attainted.

3. Pardon of all Attainders not made void with a Pardon of the Felony.

4. The Pardon of Felony reciting in the Pardon that the party is indicted, and in truth he is not, this is other wise void.

5. The

Pardon.

5. The King may pardon the burning in the hand in Appeal, & l'imprisonment per ceo discharge.

6. Sil apres infreint Peace Stat fac. gift a repealer le Pardon, & se pendu pur primer offence per le Stat 10 E. 3. 3 H. 7. 7. viz. nisi soit notwithstanding le Stat.

7. Pardon de tout Felonies per A & B. vel eor. alter. commit, pardon general. Dy. 34. 22 E. 4. 7.

Pleading the Pardon.

He that pleads a General Pardon by Parliament, wherein are Exceptions, must averr that he is none of the persons excepted.

But of a General Pardon by Parliament without Exception the Court ex Officio must take notice.

He that pleads a Particular Pardon,

1. Must shew it under Seal.
2. Must have a Writ of Allowance, q'il ad troue Surety sec. stat 10 E. 3.

Mes lou nul brief d' allowance nul

ert, 5 E. 4. 132.

3. If variance he must aver that
same person.

General

General Issue.

THUS far of Pleas in Barr upon Indictments or Appeals; now we come to *Pleas to the Fact, Not Guilty.*

1. Regularly he that pleads any special matter in Bar in Cases Capital, that confesseth not the Felony notwithstanding the Plea found against him, the Felony shall be enquired of, and therefore he shall plead over to the Felony.

2. The immediate consequent of this Plea is *Trial*; and that is either

- By the Country.
- By Peers.
- By Battel.

Trial per Patriam.

C Oncerning Trial *per patriam*;

and therein,

1. Where Issues tried.
2. What Process against Jury.
3. Before whom.
4. Challenge.
5. Evidence to be given.
6. Verdict.

I. *Where tried.*

1. For Trial of *foreign Treasons* and foreign Accessories, or stroke in one County, and death in another, either *supra* in Inditements.

2. For Trial of *foreign Pleas* by Stat. 22 H. 8. c. 14. made perpetual Stat. 32 H. 8. c. 3. Foreign Pleas pleaded by a person Indited of Felony, and Triable by the Country, shall be tried where the party is Arraigned; but it is now in Treason triable in the foreign County by virtue of Stat. I & 2 Ph. & Ma. c.

2. *Pro-*

2. Process against the Jury.

1. *Nota*, The Justices of Goal Delivery have their Pannel returned by the Sheriff, without any Precept, by a bare Award; but Justices of Oyer and Terminer not.

2. By good *Opinion*, the Justice of Peace, or Oyer and Terminer cannot make their *Venire Facias* to try an Issue returnable the same Sessions; but Justices of Goal Delivery clearly may.

3. If several persons Arraigned upon an Indictment or Appeal, and they severally plead Not Guilty, the Plaintiff may take out one *Venire Facias*, or several.

4. If the *Venire Facias* be joined Challenge by one drawn against all.

5. Though Pannel be joint, and Tales awarded, yet Court of Goal Delivery may after sever the Pannels to prevent that inconvenience.

Crom. 100.
18. Direct, &
& some Jury
be return'd
twice, & so:

6. Every one
of prisoners, and then a Challenge
if one prisoner is to be challenged to do
able; if not so, challenging another
prisoner.

S. PC. f. 155.

6. In Appeal, if after Issue, Plaintiff tries it not, a *Venire* by *Proviso* may be for the Defendant; yet upon that *Venire* Plaintiff may have a *Tales*.

3. *Tales.*

1. If a full Jury appear not, or be challenged in Indictment or Appeal, the Plaintiff may have a *Tales*. *14 H. 7. 7.*

2. Upon Indictment or Appeal, because Defendant may challenge (in such a remptorily, *Tales* may be granted, *if the Jury be not a full Jury, unless larger than the Principal Pannel,* as *14 H. 7. 7.*

3. But the succeeding *Tales* must be less than the former, unless the first be quashed, and then the same number with that which is quashed.

4. If any of the Jury die before sworn, a new *Tales* grantable.

8

3. Before

3. Before whom?

1. A *Nisi prius* not grantable where the King Party, unless prayed by his Attorney.

2. By Stat. 14 H. 6. c. power given to Justices of *Nisi prius* to give Judgment in Felony and Treason tried before them.

3. By Stat. 42 E. 3. c. 11. Inquest in Assize and Goal Delivery may be taken before the Pannel turned in Court, but not in other Cases.

Challenge.

4. Challenge of Array or Polls.

1. *Ex parte Regis* by Stat. 33 E.

c. the King shall not Challenge without Cause; but yet he is not compellable to shew the cause till the J u d g m e n t perused.

2. *Ex parte prisonarii*, the Challenge is either Peremptory, or upon cause.

Peremptory Challenge.

1. A peremptory Challenge not allowable, but where the life of a prisoner comes in question, and therefore not upon Collateral Issues.

2. At Common Law he might have challenged peremptorily 35. under three full Juries; and if he challenged above, he should have Judgment to hanged, 3 H. 7. 12.

Kellog: 36

*one Chal-
lenge,*

But by Stat. 22 H. 8. c. 4. made 36: *one Han-*
*perpetual, by 32 H. 8. c. 3. it is
duced to 20; and now if he Chal-
lege above 20, he shall not be
reduced to 20; and now if he Chal-*

Challenge.

Challenge Over-ruled, and he put upon his Trial; yet *vid. Statute* *semel contra.*

3. In Case of Treason and petit Treason, the Challenge of 35 is stored by *Stat. 1 & 2 Ph. & Ma.*

2. Challenge for Cause; we mention but three;

i. Cause of Insufficiencies. By the *Stat. 2 H. 5. c. 3.* 40*s.* per *Ass.* required in County; but this, as Aliens, corrected by *8 H. 6. c. 11.* in Cities by *Stat. 23 H. 8. c. 13.* Go up to the value of 40*l.*

2. Unindifferency.

Indictor not to be of Jury
Stat. 25 E. 3. c. 3.

3. In reference to an Alien, or *dicitur linguae*, where

i. In no Case Indictors ought to be *de medietate linguae*.

2. In Treason trial per *medietatem linguae repellere* per *S.*

1 & 2 Ph. & Ma. quod

repel 28 E. 3. in that Case

Alien mentioned, as above, and sued, according to beginning of 3.

3. In Appeal by an Alien against an Alien no *mediatam linguae*.
4. Scot no Alien, to have *mediatam linguae*.
5. The Jurors need not be of the same Nation, but any Aliens.
6. He that will have advantage of Trial *per mediatam linguae* must pray it, otherwise he cannot have benefit by way of Challenge. *Dy. 304. 357.*
7. *Egyptians* excluded from the Trial *per 1 & 2 Ph. & Ma.c. 4.*

Evidence.

5. **E**vidence to the Petit Jury.

1. In Case of Treason

There must be two Accusers & Witnesses by Stat. 1 E. 6. c. 12. & 5 E. 6. c. 11. and this stands notwithstanding Stat. 1 & 2 Ph. & M. c. 11. but only in Case of Treason for Counterfeiting Coin.

These Witnesses must not be on by hear-say.

2. In Case of Felony.

1. What allowed as Evidence

1. By Stat. 1 & 2 Ph. & M. c. 13. & 2 & 3 Ph. & M. c. 10. the Justice hath power to Examine the Offender and Informer.

2. The Examination of the Offender not upon Oath but Subscribed by him.

3. Examination of others will be upon Oath.

4. This must be certified to the Justices.

1. If it be but a small Felony to the Sessions.

2. If it be a great Felony, &c.
to the next Goal Delivery.
5. These Examinations, if the
party be dead or absent, may
be given in Evidence.

But Prudence to have the
Justice or his Clerk sworn
to the truth of the Exam-
inations.

6. But Examinations taken upon
a Cause of Divorce for a
forcible Marriage, not allow-
ed to be read upon an In-
dictment upon 3 H. 7. for
the same Marringe.

By whom.

1. Wife, or her Examination, not Dal.c. 111.
to be used for or against her
Husband.
2. The Examination of an *Infant* of Thirteen, nay of Nine,
allowed in some Cases.
3. One Attaint of Conspiracy,
Forgery, or Perjury, not al-
lowed a Witness.
4. One duly set on Pillory. C. P.C. 219.

In what manner.

1. Evidence for the King always upon Oath.

C. PC. c. 32.

*7. 8. h. 3. c. 34: upon Oath; yet no known Law
withers for pris, that restrains it: But by some Sta-
tutes in some Cases, Evidence for
the Prisoner upon Oath, as 3 Eliz.
c. 4. 4 Jac. c. 1.*

The Confession of the Offender taken upon Examination, Evidence with Oath not of the Informer.

4. Where Evidence maintains the Indictment.

C. PC. f. 230.

1. If the Indictment be of a Felony, &c. at one *day*, though the Evidence be of another day, the Jury may find generally against Prisoner, and leave the person that is interess'd in point of time to falsifie; Or the Jury may find the true day upon their Verdict, and then the forfeiture shall relate thither.

2. If the Indictment lay the Felony at *one place*, the Evidence proving the Fact at another place in the same County, maintains the Indictment.

3. I.

3. If the Indictment and Evidence differ in *specie mortis*, then it maintains it not: as Indictment of Poisoning, Evidence of stabbing maintains it not.

But if the Indictment be of poisoning with one kind of Poison, C. P. C. 135. and the Evidence of another; or of killing with a Dagger, and ^{9 Rep. Mack.}
_{all's Case.} the Evidence is of killing with a Staff, yet it maintains the Indictment; for it agrees in substance and kind.

The like of Accessaries before, though the Poison or Weapon different.

4. Indictment that *A.* gave the mortal blow, and *B.* *C.* and *D.* were *presentes & abettantes*; Evidence that *B.* gave the blow, and *A.* *C.* and *D.* *presentes & abettantes*, yet it maintains the Indictment.

5. Indictment of *A.* as Accessary to *B.* and *C.* Evidence proves him Accessary only to *B.* maintains the Indictment.

6. Indictment of Murder, *ex malitia præcogitata*; Evidence of malice

Evidence.

lice in Law, as killing an Officer or without Provocation, yet maintains the Indictment.

7. Indictment upon Statute of Stabbing, 21 Jac. Evidence that the dead stroke first, yet Evidence to maintain the Indictment for Manslaughter generally. H. 23 Car. Hornwood's Case.

8. Two Indicted as Principals. Evidence proves one Accessee before he shall be discharged of that Indictment. 26 H. 8. 5.

*Leaving 32. Noh. In which for
endeavouring Bastard Child; on
she dies gen: contra Person: al
non contra humam obit: for
obit obit: v: does not make
any offence: but may
suffer death as in case of Murde
unless she prove by one Witne
evidence: y^t the man
that the Child was born dead.*

*If he h^t a d^r Vid. Act. 17 Car. in fine, for the
continued to cancel; further Relief of his Majest
Army in the Northern parts. A
continued till end of next Sessions; continued over till for
Act of Parliament for their con
tinuance or discontinuance.*

*Believe^d ho h^t by Giv^e us for this
in lot w^t s^t g^t b^t: so that
to cancel it: t^y g^t no s^t f
but a^t C^t it^s no Blunder*

Ver

Verdit.

VERDIT in Cases Capital.

1. It must be given, and St. P. C. 165. saith that the Jury cannot be discharged till it hath given an Indictment of Murder, the Jury may find him Guilty
2. It must be given openly in Court, and no privy Verdict.
3. It may be found Specially; as

1. Of Manslaughter :

2. *Per Infortunium* :

3. *se Defendendo*.

But then they must find the manner of it, that the Court may Judge thereof; so for the value or the manner of the Larceny.

Trial by Battel, Peers.

Now we should come to Trial By Battel.

By Peers: v. the whole Process thereof, C. Pl. Cor. 27.

Judg-

Judgments in the several Cases.

I. In High Treason.

C. P. C. 218.
219.

1. In all Cases, except Counterfeiting Coin, Drawn, Hang'd, Entrails taken out and burnt, Head cut off, Body quartered, Head and Quarter hang'd up.

2. In Counterfeiting Coin, Drawn and Hang'd : *Imprison per tonsure.* Dy.

230.

But the Judgment of a Woman in those cases. Drawn and Burnt.

II. In Petty Treason.

1. For a Man, Drawn and Hang'd
2. For a Woman, Drawn and Burnt.

III. In Felony.

Hang'd till Dead: And this cannot be by the King altered to Beheading.

IV. In

IV. In Petty Larceny.

To be Whipt.

He forfeits Goods.

V. Death per Infotunium.

No express Judgment; yet Forfeits Goods.

VI. Death se defendendo.

No express Judgment; yet Forfeits Goods.

VII. Misprision of Treason.

Forfeits Goods; Forfeits Profits
of Land during Life; perpetual Im-
prisonment.

Vide for Seizure of Goods.

1. Not before Indictment.
2. Nor removed before Attainder. 1 R. 3. c. 3.

Fal-

Falsifying Attainders.

1. By the Party, by *Writ of Error*.
2. By others *Falsifying* it.
 1. A Purchaser may falsify the Attainder of the Vendor, Utalary or Confession in the point, if he Purchase before the Attainder, and after the time of the Felony supposed.
 2. A Purchaser *mesne* between the time of the Felony committed, and the Attainder Verdict, cannot falsify the point of the Offence, but he may for the time.
 3. If the Attainder was by such as had no good Commission, the Party himself may falsify the Attainder. *Causus Cui Leicest.*
 4. If the Principal Attainder, and then the Accessary, or the Principal reverse the Attainder, the Attainder of the Accessary is *eo ipso* avoided, so his Heirs may have Mortdaine against the Lord by *Escheat*.

5. Attaint of Treason, and then the Treason is pardoned by Act of Parliament, the Party or his Heir shall falsifie Attainder.
6. In Case of Goods.
 1. *Fugam fecit* found by the Coroner cannot be falsified, though upon his Arraignment it be found he did not fly: But if the Indictment be void or insufficient, no Forfeiture.
 2. A man Indicted before Justices of Oyer and Terminer, acquitted by Verdict, and found he fled, and the particulars of his Goods found, they may be Traversed.
 3. Default till *Exigent*, though after acquitted, Goods Forfeited; for it is a *fugam fecit* in Law.
- But if the Indictment, Appeal, or Process insufficient, the Forfeiture saved; so if it be reversed by Error, or pardoned before *Exigent*.

Nota, Flight or *Exigent* in case of Petty Larceny, Forfeits Goods.

Execution

S.P.C. 184.

Execution and Reprieve.

C. P. C. 212.
217.

I. **T**HE Execution must be pursuant to the Judgment, and cannot be altered by the King, from Beheading to Hanging.

2. But King may pardon part the Execution; as in Treason, may pardon all but Beheading.

3. It must be done by the proper Officer.

4. If a Woman, Convict of Treason or Felony, be quick with Child, she shall have one Reprieve, but no second time.

C. P. C. c. 7. 217.
S. P. C. 198.

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F I N I S.

FOR
The Right Honourable
THE
LORD HIGH TREASURER
OF
ENGLAND,
And the
CHANCELLOR
Of the
EXCHEQUER.

According to my Promise to your Lordships, I have given a large Historical Narrative of the Sheriffs Accompts for the
A 2 Annu-

Epistle Dedicatory.

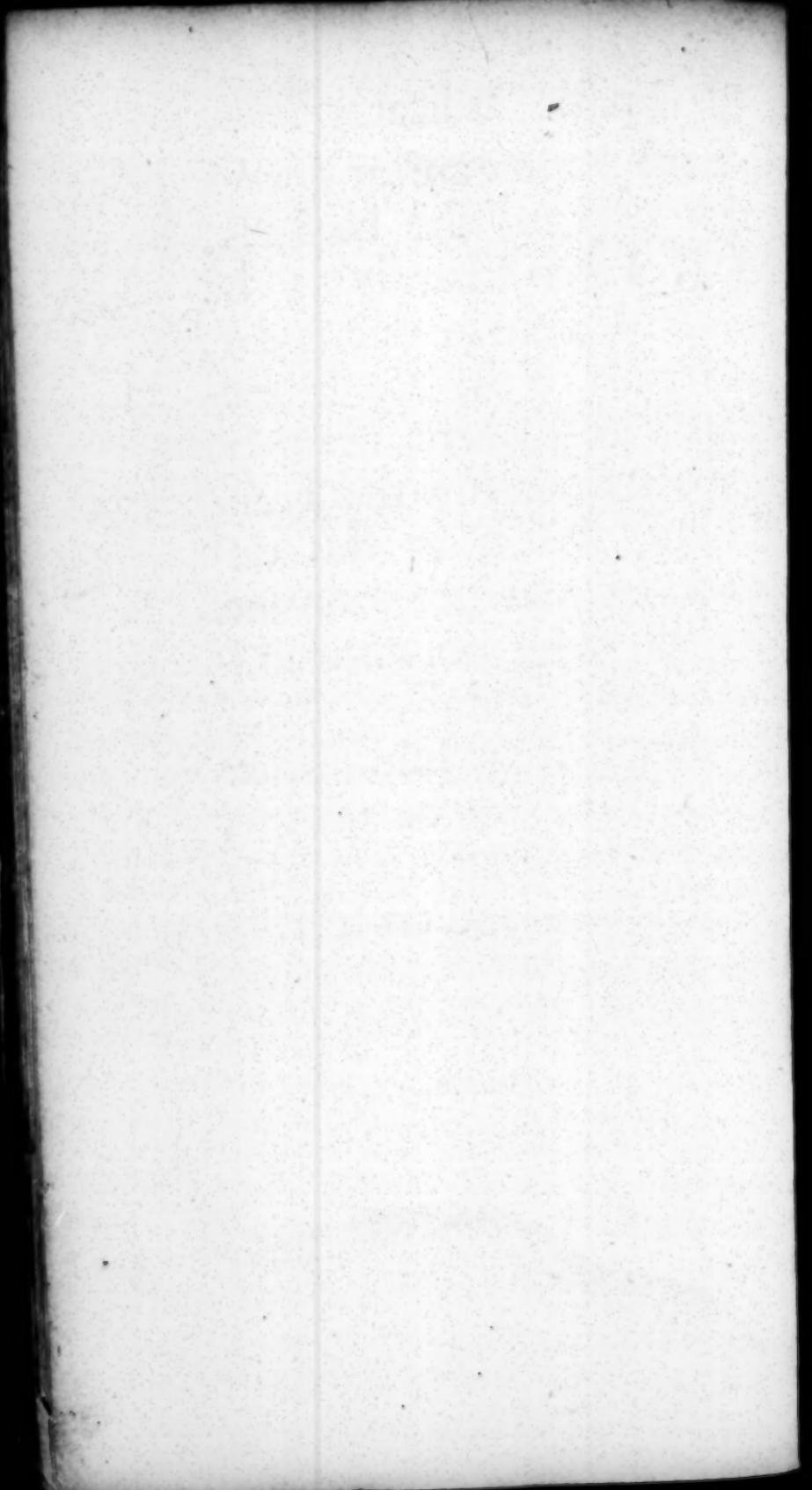
Annual Revenue of their Countries : Wherein some things may occur that may be usefull to the understanding of the Sheriffs Accompts, and many other old obscure Records, and some things incidently opened that have been formerly obscure and scarce intelligible, yet fit to be known. Some things also relating to the difference between the Auditors of the Revenue, and the Officers of the Pipe. There may be some mistakes of my own, I confess, in a matter of so great intricacy, perplexity and obsoleteness, which I could not easily correct, in the Country, because many of

Epistle Dedicatory.

of my Papers are at *London* that concern this business, and, I fear, hardly to be retrieved, into a due order, in regard of the late distraction. And here may be some mistakes in the Transcriber, which at this distance I could not examine. But, possibly, notwithstanding these mistakes, Your Lordships may find something that may be usefull, and when I wait upon you I shall review and correct.

*Your Lordships
bumble Servant.*

THE



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A Short

(1)

A Short

T R E A T I S E

Touching

Sheriffs Accompts.

C H A P. I.

Touching the ancient and modern Weight and Allay of Sterling Silver.

IT will be necessary for the better understanding of Sheriffs accompts, especially in the elder times, to examine these matters, *viz.*

I. Touching the Denomination, Weight and Allay of Sterling Money,

B **n***ey.*

2 A Short Treatise touching
ney, the Corruptions thereof in
both, and the remedies that have
been formerly applied for the re-
formation of these corruptions.

II. Concerning Firmes, their na-
ture, and how they were answered
in former times. The first shall be
the subject of this Chapter, the se-
cond the subject of the next.

Concerning the former of these,
I shall apply my self singly to the
busyness of Silver Coin, because that
was the usual species wherein the
King's Firmes were commonly an-
swered.

And first, concerning the Coin
of Silver, there are these things
considerable therein.

1. The Authority or Power that
gives it its Stamp, Weight,
Denomination and Value.
2. The Matter of it.
3. The Weight and Denomina-
tion.

As concerning the first of these,
it is, without all question, the in-
herent Regality and Prerogative of
the Crown, to give the Currant-
ness,

Sheriffs Accompts. 3

ties, Allay, Weight, Denomination and extrinsique Value to the Coin of this Kingdom: and as it is a part of his Regality and Prerogative, so it is a part of his Regal Revenue, which is called the King's Seigniorage, or Royalty, or Coinage, *viz.* ordinarily, on every pound weight of Gold, the King had for his Coin 5*s.* out of which he paid to the Master of the Mint, for his work, sometimes 1*s.* sometimes 1*s. 6d.* Upon every pound weight of Silver, the Seigniorage, or Coinage, answered to the King, in the time of King *Edw. 3.* was 8 penny weight, *pondere*, which about that time amounted to 1*s.* out of which he paid sometimes 8*d.* sometimes 9*d.* to the Master. In the time of *H. 5.* the King's Seigniorage of every pound weight of Silver was 1*s. 5d.* See *Rot. Parl. 9 H. 5. pars 2. N. 15.* although the Authorization, Denomination and Stamp of Coin was undoubtedly the King's right, yet it appears by *Roger Hawood*, that in the troublesome times of King

4 A Short Treatise touching

Stephen, viz. An. Dom. 1149. Omnes Potentes, tam Episcopi quam Comites & Barones, suam faciebant monetam. But Henry the second coming to the Crown, remedied this usurpation of the Baronage : *Novam fecit monetam quæ sola recepta erat & accepta in regno.* And since that time, the exercise as well as the right of coining of Money in the Kingdom hath remained uninterruptedly in the Crown. It is true, that by certain ancient privileges, derived by Charter and Usage from the Crown, divers, especially of the eminent Clergy, had their Mints or Coinages of Money. As the Abbot of St. Edmundsbury, *Claus. 32 H. 8. m. 15. dorso* : And the Archbishop of Tork *Claus. 5 E. 3. pars 1. m. 10. 19. dorso*, and some others. But although they had the profit of the Coin, yet they had neither the Denomination, Stamp, nor Allay : for upon every change of the Coin by the King's Proclamation, there issued over a Mandate to the Treasurer

surer and Barons to deliver a Stamp over to those private Mints to be used. But this liberty of Coinage in private Lords hath been long since disused, and in a great measure, if not altogether, reassumed by the Statute of 3 H. 7. Cap. 6.

2. Concerning the second, *viz.* the Matter or Species whereof the currant Coin of this Kingdom hath been made, it is Gold or Silver, but not altogether pure, but with an Allay of Copper, at least from the time of King H. 1. and H. 2. though possibly in ancienter times the Species whereof the Coin was made might be pure Gold or Silver; and this Allay was that which gave the Denomination of Sterling to that Coin, *viz.* Sterling Gold, or Sterling Silver: Wherein there will be inquirable,

1. Whence that Denomination came.

2. How ancient that Denomination was.

3. What was the Allay that gave Silver that Denomination.

6 A Short Treatise touching

For the former of these there are various conjectures, and nothing of certainty.

Spelman supposeth it to take that Denomination from the *Esterlings*, who, as he supposeth, came over and reformed our Coin to that Allay. Of this opinion was *Cambden*, *A Germanis, quos Angli Esterlings, ab Orientali situ, vocarunt, facta est appellatio; quos Johannes Rex, ad Argentum in suam puritatem redigendam, primus evocavit: & ejusmodi nummi Esterlingi, in antiquis scripturis semper reperiuntur.* Some suppose that it might be taken up from the *Starre Judæorum*, who being the great Brokers for Money, accepted and allowed Money of that Allay, for currant payment of their Stars or obligations. Others from the impression of a Sterling, or of an Asterisk upon the Coin. *Pur ceo que le form d'un Stare, dont le diminutive est Sterling, fuit impress ou stamp sur ceo.*

Autres pur ceo que le primer de cest Standard fuit coyn en le Castle de

de Sterlin in Scotland pur le Roy
Edw. I. And possibly as the proper name of the fourth part of a Peny was called a Farthing, and ordinarily a Ferling; so in truth the proper name of a Peny in those times was called a Sterling, without any other reason of it than the use of the times and arbitrary imposition, as other names usually grow. For the old Act of 51 H. 3. called *Compositio Mensurarum*, tells us that *Denarius Angliae Sterlingus dicitur*. And because this was the root of the measure, especially of Silver Coin, as will be shewed, therefore all our Coin of the same Allay was also called Sterling, as five Shillings Sterling, five Pounds Sterling.

2. When this name of Sterling came first in is uncertain, onely we are certain it was a Denomination in use in the time of H. 3. or Ed. I. and after-ages. But it was not in use at the time of the compiling of Doomsday, for if it were we should have found it there, where there is

8 A Short Treatise touching
so great occasion of mention of
Firmes, Rents and Payments.

*Standard del mony en French est
appel Pied de mony per Bodin, Pes
monetarum, quasi Princeps ibi pedem
figit.*

Matth. Paris mag. Hist. 220. b.
*In le 12 an. de Roy John le premier
standard del English mony fuit esta-
blish en Realm d' Ireland, et fuit e-
qual al primes, & que l' English mo-
ny ne fuit au quart part melior in
value que l' Irish, come ceo ad estre
depuis le temps del Edw. 4. Et
fuit change in Ireland come ceo fuit
change in Engleterre. Le primer
difference & inequality inter les
Standards del English monies, &
Irish monies est troue in 5 Ed. 4
car donq; fuit declare in Parliament
icy que le Noble serra currant en
cest Realm pur 10s. & issint fuit
que l' Irish Shilling forsque 9d. Den-
gletre.*

Hovenden in Rich 1. fol. 377. b.
*Videns igitur Galfridus Eboracensis
electus, quod nisi mediante pecunia
amorem Regis sui nullatenus habere
possit,*

*possit, promisit ei tria millia Libra-
rum Sterlingorum pro amore ejus
habendo. Que fuit devant le temps
del Roy John; pur que semble que
le temps quant cest money fuit pri-
merment coin est uncertain. Car as-
cuns diont que fuit fait per Osbright
un Roy de Saxon race 160 ans de-
vant le Norman conquest. Nummus
a Numa que fuit le primer Roy que
fesoit moneies en Rome. Iffint Ster-
lings, alias Esterlings, queux pri-
mes fesoient le money de cest Stan-
dard en Engleterre.*

3. As touching the Allay that
is by use and custom fitted to that
Money which we call the Sterling,
or Sterling Allay; perchance we
shall not find that constancy in the
Allay as is generally thought.

The Sterling Allay of Gold, ac-
cording to the Red Book of the Ex-
chequer is this. The Pound weight
of Gold consists of twenty four
Charats, every Charat weighing
half an Ounce of Silver; and eve-
ry Charat of Gold consists of four
Grains, and consequently every
Grain

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Grain of Gold weighing thirty of
these Grains which we call Silver
Grains, whereof hereafter.

In the time of *Edw. 3.* the Pound
of Sterling Gold consisted of twen-
ty three Charats, three Grains and
a half of pure Gold, and half a
Grain of Allay of Copper.

The Sterling Silver, as it seems
to me, in former times had an Al-
lay differing from what it is at this
day. At this day a Pound weight
of Silver (*viz.* 12 Ounces to the
Pound, or *Troy* weight) consists
of eleven Ounces two Penny-weight
of fine Silver, and eighteen Penny-
weight of Allay or Copper: every
Pound containing twelve Ounces,
and every Ounce divided into 20
parts called twenty Penny-weight:
For at that time 20 Penny-weight
weighed one Ounce, which though
the Penny-weight be altered, yet
the Denomination continues. And
this Allay was in use in the forty
sixth year of King *Edw. 3.* and for
some time before, and hath contin-
ued ever since.

In

In the Treatise of Money in the Red Book of the Exchequer, which seems to be written in the time of *Edw. 3.* for it mentions the Indentures of the Mint in *23 Ed. 3.* it is said the use was then that in every pound weight of Sterling Silver there was sixteen Penny-weight of Allay : the consequence whereof is that the Pound of Sterling Silver then contained eleven Ounces four Penny-weight of fine Silver, and sixteen Penny-weight of Copper.

And it should seem by what follows in the Chapter, that in the time of *H. 2.* the Allay of Copper in Sterling Silver was less than that : For upon every Pound weight of Silver Money they used to allow 12 Penny-weight *ad dealbandam firmam*; which seems to be the remedy for the reduction of the Money then currant into fine Silver, *sed de hoc postea.*

But at this day, and for very many reasons, the Allay of Sterling Silver hath been 18 Penny-weight of Copper allowed to 11 Ounces

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2 Peny-weight of fine Silver; thereby making up the Pound weight Troy of Sterling. *Vid. Indentures of the Mint, Claus. 46 Ed. 3. m. 18. Dors. Claus. 1. H. 5. m. 35. Dors. Claus. 4. Ed. 4. m. 20.* And this I take at this day to continue the Standard of Sterling Silver.

29 E. I. Per special ordinance del Roy les Pollards & Crockards furent decrie & adnul, quel ordinance fuit transmit in Realm d' Ireland & enrol en Exchequer icy, come est troue in Libro rubro Scaccarii, *ibid. pars 2. fol. 2. b.*

En temps E. I. Denarius Angliae, qui nominatur Sterlingus, rotundus sine tonsura, ponderabit triginta & duo grana in medio spicæ.

Sterlingus & Denarius sont tout Dy. 6. & un. Le Shilling consistoit 7 Ed. 6. de 12 Sterlings. 25 E. 3. cap. 6. Le substance de cest denier ou Sterling Peny al primes fuit viceima pars unciae. Et issint continue

Rastal Money. 345. tanq. 9 E. 3. quant l' ounce del Silver fuit tallie in 26 pence que proportion fuit conti-

continue tanq. 2 H. 6. quant l'ounce
del Silver fesoit 32 pence. Et cest
iusq; al 5 E. 4. quant fesoit 40 pence.
Et cest iusques 36 H. 8. quant il
prepare son journy al Bulloigne &
donq; fuit divide en 45 pence. Que
continue iusques al 2 El. quant l'ounce
de pure Silver fuit tallie en Davies 24.
60 pente, & cest Standard
remain a cest jour.

Et quaelibet libra de sterling a-
voit 18d. ob. d' allay de Copper, &
nient plus. Et cest allay de sterling
Mony les Ordinances ou Statutes de
25 E. 3. cap. 13. & 2 H. 6. cap. 13.
font mention, & est contein en tous
Indentures fait enter le Roy & les
Maisters del Mint.

CHAP. II.

*Concerning the Weight of Coin,
and the difference therein,
with regard to the Denomi-
nation of Coin.*

THE Pound weight of Gold though it were the same with that of Silver, yet is made up of smaller parts of a different Denomination, every Pound weight consisting of 24 Charats, and every Charat consisting of 4 Grains.

The Pound weight of Silver is subdivided into parts of another Denomination; for every Pound consists of 20 Penny-weights, and every Penny-weight of 24 Grains. This appears by the Books and Records above mentioned. *Et touts susdits moneys dargent issint faites serront dallay de Standard de veil Esterling: Cest ascavoir que chescun leivre dargent de cestes moneys de poize tien-*
dra

dra unze ounces & 2d. de poize dargent fine, & 18d. de poys dallay, chescun penny weight containant 24 grains.

So that every Charat in the Pound weight of Gold equals half an Ounce of Silver; and every Grain of Gold, the fourth part of a Charat, equals 60 Grains of Silver weight.

In that old Ordinance, before mentioned called *Compositio Mensurarum 51 H. 3.* it is said, *Per ordinaciones totius Regni Angliae fit una mensura Domini Regis composita, viz. quod Denarius Angliae, qui nominatur Sterlingus, rotundus sine tonsura ponderabit triginta & duo Grana frumenti in medio spicæ; & viginti Denarii faciunt Unciam; & duodecim Unciae faciunt Libram, &c.*

But these thirty two Grains in the middle of the ear of Corn, are the natural Grains, which were the weight of the then English Sterling Penny. But for the better accommodation of Accompts, these 32 natural Grains are reduced to 24 artificial Grains, which

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which, from very ancient time unto this day are the common measure of the Penny-weight, as the 20 Penny-weight is the measure of an Ounce.

Having thus stated the artificial weights of Gold, and Silver, especially the latter, I shall proceed to the comparison that now and anciently stands between these artificial weights and the Coin of Silver.

It is very plain that in the latter end of H. 3. and the beginning of King Ed. 1. and for a long time before, twenty Pence of Sterling Money did weigh an Ounce, and twelve times twenty Pence or twenty Shillings did then weigh a Pound Troy weight: and accordingly as twenty Penny-weight was then an Ounce, and so called, so two hundred forty Pence, or twenty Shillings was a Pound weight, and so called, *viz. Libra Argenti.* And although at this day the Penny and the 20 Shillings of Silver is much altered in their true weight, yet the Denomination is still retained. The Ounce is commonly divided and esti-

estimated by 20 Penny-weight, and 20 Shillings is called *Libra Argenti*.

In the time of King *Edw. I.* (as appears) an Ounce of Sterling Silver made 20 Sterling Pence, and consequently a Pound of Sterling Silver made 240 Pence Sterling. But process of time hath made a great alteration between the Weight and extrinsique Denomination or Value of Money.

In 46 *E. 3.* it appears by the Indenture of the Mint that a Pound of Sterling Silver made then 300 Sterling Pence. *Claus. 46. E. 3. m. 18.*

And afterwards in 1 *H. 5.* the reduction of Coin was such that a Pound weight of Sterling Silver made 360 Pence Sterling. *Claus. 1 H. 5. m. 35. dorso.* Which made the Pound weight of Silver to contain 30 Shillings, and deducting 1 Shilling for Coinage, the Merchant had 29 Shillings for his Pound of Silver brought into the Mint.

In the 4th year of *Ed. 4.* the Pound of Sterling Silver yielded 33 Shillings

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viz. about 396 Pence in the Pound: and consequently 33 Sterling Pence then made the Ounce of Silver.

Claus. 4. E. 4. m. 20.

At this day the Ounce of Silver coined contains 5 Shillings, or 60 Pence: and consequently the Pound weight of coined Silver yields 60 Sterlings or 720 pence. So that at this day the extrinfiscal Denomination or Value of Money in proportion to its Weight, is three times higher than it was in the time of *E. 1.* And thus much shall suffice touching the second enquiry.

CHAP.

CHAP. III.

Touching the Corruptions of Money, and the remedies anciently used in relation thereto.

BY what hath been before said it appeareth, the two special requisites of the currant Coin of this Kingdom are,

I. That it be of the true Standard in relation to its weight.

II. Of the true Standard with relation to its Allay; and proportionably to these two requisites are these defects, which have hapned in Moneys in modern and ancient times, *viz.*

I. The defect in the due weight of Money which hapned sometimes by counterfeiting the Sterling Money, though with a weight below the Standard. Sometimes by clipping, or otherwise im-

C 2 pairing

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pairing the weight of true Money.

2. The defect in the due Allay : *viz.* overcharging the fine Silver or Gold with an Allay of Copper more than the Standard, which hapned sometimes by the deceit or ignorance of the officers of the Mint, and sometimes by the counterfeiture of the Coin of *England*.

And by these practices the King's Exchequer (into or through which the most of the Money of the Kingdom successively came) was many times surcharged with such defective Money, and the King thereby deceived in his Firmes.

And therefore in ancient times there were successive experiments made by the officers of the King's revenue for the discovery and avoiding of these defective Monies and that his Rents might be answered in Money of a just weight and Allay ; which, for the better understanding of ancient Records, remain here to be explicated, *viz.* *Solutio ad Scalam*, *Solutio ad Pensum*, and *Combustion*, or tryal by fire.

fire. The two former being such Remedies as related to defective Weight, and the latter being the Remedy that relates to defect in the Standard of Allay. And, touching this business, although we have very frequent mention of them, in the Pipe-rolls especially, yet the best, and contemporary exposition of them is *Gervasius Tilburiensis*, or the black Book of the Exchequer, written in the time of H. 2. who gives us the accompt thereof in his first Book, *Cap. A quibus, & ad quid inventa fuit Argenti examinatio*, who thus expounds it.

I. *Solutio ad Scalam*, viz. *præter quamlibet Libram numeratam sex Denarios*, which it seems was agreed upon a *medium* to be the common estimate or Remedy for the defective Weight of Money, thereby to avoid the trouble of weighing the Money which was brought into the Exchequer. And this is the meaning of that frequent expression in the ancient Pipe-rolls *In Thesauro 100l. ad Scalam*, which

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seems to be one hundred Pounds,
and one hundred Sixpences, or fif-
ty Shillings.

2. *Solutio ad Pensum*: which was
the payment of Money into the Ex-
chequer by full weight, *viz.* that a
Pound, or 20*s.* in Silver, *numero*, or
by tale, should not be received for
a Pound unless it did exactly weigh
a Pound weight Troy, or twelve
Ounces, and if it wanted any, that
then the Payer should make good
the weight by adding other Money
although it amounted to more or
less than 6*d.* in the Pound (which
was the *Solutio ad Scalam*, as before
is mentioned.) And thus frequently
occurs in the Pipe-rolls, *In Thesauro*
*100*l.* and pensum*, or full weight.

3. Combustion or tryal by fire:
which is by *Gervase* supposed to be
set on foot by the Bishop of *Salis-
bury*, then Treasurer, (though in
truth it were much more ancient, as
appears by frequent passages in the
Book of *Doomsday*:) and the Au-
thor gives the reason: *Licet enim*
*numero & pondere videretur esse sa-
tis factum*,

tisfactum, non tamen materia. Consequens enim non erat ut si pro Libra una numerata 20 Solidos, etiam Libra ponderis respondentis consequenter Libram solvisset : Argentum enim Cupro vel quovis Ære solvisset. And thereupon ensued the constitution of examination of Money at the Exchequer by Combustion. Whether this examination was to reduce an equation of Money onely to Sterling, *viz.* a due proportion of Allay with Copper ; or to reduce it to fine and pure Silver, and to make the estimate of the Pound or *Libra Argenti*, reserved of their Firmes to be in pure Silver, and without Allay, doth not so clearly appear. Some think the former ; and therefore that the old expression of *Firma alba*, blank Firm, and *dealbare Firmam*, was nothing else but Coin melted down and reduced to the Allay of Sterling, and after blanched, or whited, as is done by the Moneyers with their Sterling Coin of Silver, which is to this day called blanching. *Vid. Spelman in*

tit. Firmam dealbare. But yet it may seem, by what ensues, that it was to reduce it to fine Silver, and to the estimate of the Pound, or *Libra Argenti* accordingly; for it is evident by what follows, that the difference between a Pound, or *Libra Argenti numero*, and *Libra Argenti blanch*, was 12 Pence in every Pound: which possibly might be that the allowed Allay of Copper in the Sterling Silver was then twelve Pence weight of Copper in the Pound of fine Silver, whereas it is now 18 Penny-weight in the Pound. This tryal of Silver by Combustion, in those elder ages soon prevailed and obtained against the former reductions *ad Scalam*, & *ad Pensum*, as being the onely infallible tryal of the truth of the Metal, whereby the former reductions of *Pensum* and *Scalam* became in time antiquated.

And this begat the distinction in the old Rolls of the estimate of Money *Numero*, and the estimate *Blanc*: and in pursuance thereto the reservations

vations of Rents and Firmes by the King were sometimes *Numero*, and sometimes *Blanc*.

The reservations of Rents *numero* were no other but so much Money reserved *in Pecuniis numeratis*: as *reddendo quinque Libras numero* was fivescore Shillings, which amounted in common estimation to five Pounds Troy weight: And this was the ancient and usual reservation, and, *prima facie*, unless the contrary were expressed, upon all Grants of Lands (reserving so much Rent) it was intended *numero*; that is, so much in Money numbred, and the Firmor was not bound *de albare Firmam*, or to make good so much in fine Silver, or, if you will, in such silver as was of the first Allay.

The reservation of so much Money, or so many Pounds *blanc* did enforce the Firmor to make good to the King so much in fine Silver, (or at leait in the purest Sterling) and therefore such Firmor, when he paid in his Firme upon such a reservation

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vation *blanc*, was bound *dealbare Firmam*, which was to submit his Money to the test of the fire; and to answer his Money, and make it good in fine Silver according to the reservation, or to pay in allowance thereof that rate which was the ordinary measure of reduction of it to fine Silver, which was 12*d.* for every Pound as shall be shewed.

And hereupon grew the common difference which is everywhere mentioned in the Pipe-rolls of Firmes *numero*, and Firmes *blanc* or *alb.* Firme.

This difference of these Firmes is expounded by the Black Book of the Exchequer, *Lib. 2. Cap. Quid sit quosdam fundos dari blanc, quosdam numero, viz.* that if a Firme or Tenement were let by the King generally, without expressing *blanc* or *numero*, it was to be answered onely *numero*, unles specially reserved *blanc*, (*viz. 5s. blanc.*) But if a Royalty or Franchise were onely granted, then the general reservation of so much Rent, was to be *blanc* Rent.

Rent. Porro, *Firmam numero dari diximus cum tantum numerando, non examinando ipso satisfit.* Cum ergo Rex Firmam alicui contulerit, simul cum *Hundredo vel placito quæ ex hoc proveniunt, Firma dealbari dicitur: si simpliciter fundum dederit (non determinans cum Hundredo vel blanc.) numero datus dicitur.* And from this diversity of the Rents arising in any County (some *blanc* onely, some *numero* onely, some in both) arose the diversity in the titling of the Sheriffs Accompts, viz.

Firma de remanente Comitatus post terras datas blanc: which was applicable to those Rents of his County, which were answered in fine Silver reduced to the test by combustion, or with an allowance of *12d.* in the Pound in compensation of it.

Firma Comitatus numero, was his Firme for those Rents of his County which were onely answered in Money numbred, without reducing them to their fineness by Combustion, or any satisfaction for it

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it: But of this more fully in the en-
suing Chapter.

I have before mentioned that when any Firme was reserved or an-
swered *blanc*, the Money was to be melted and answered in fine Silver,
or at least to Silver allayed to right and finest Sterling; or else he was
to redeem himself from that trouble by payment of 12*d.* in the Pound:
So that that Person upon whom there was reserved 5*l.* *blanc* was to
pay 5*l.* 5*s.* if he would not have his Money melted down and made
good in fine Silver (or at least in true Sterling.) And this appears to
be true by infinite Records: Take
two or three for instance.

In compoto cum Northampton,
*21 H. 3. Summa totalis 102*l.* 3*s.* 7*d.**
*de qua 4*l.* 9*s.* 4*d.* blanc, quæ sunt*
*extensæ ad 4*l.* 13*s.* 9*d.* subtrahuntur*
ad perficiendum corpus Comitatus &
*remanet 97*l.* 13*s.* 1*d.* de quibus re-*
spondet de proficuo in magno Rotulo.

Claus. 13. H. 3. m. 2. Sciatis quod
perdonavimus dilectæ Sorori nostræ
A. Comitissæ Pembroc centum tri-
. *ginta*

ginta & quinque Libras blanc, quæ extensæ sunt ad centum quadraginta & unum Libras, & quindecim Solidos.

*In Compoto Bedf. & Bucks, 13 E.
3 Nic. Passelew de 18l. 4s. 4d. numero pro 17l. 7s. blanc.*

In all these the proportion riseth very near, bating the small fragments in Pence, that every Pound *blanc* answered one Shilling over, to reduce it to its value.

And hence it is that at this day the ancient Firmors of Cities, as *London, &c.* which were commonly reserved *blanc*, do pay the same in Sterling Money, and one Shilling for every pound over: As if 100l. *blanc* be reserved, there is answered at this day in the Receipt 105l. which, as before, makes me suppose that *blanc* Firme, or *dealbata Firma*, was in truth when it was reduced to fine Silver, and not barely Sterling: for this advance of 12d. in the Pound upon such *blanc* Firmes is still answered though paid in Sterling.

CHAP. IV.

*Concerning the manner of answering the King's Firmes
anciently.*

IN ancient times, *viz.* about the time of *William* the first and *Henry* the second, the reservation of the King's Firmes and Rents were so many Pounds or Shillings, &c. in Money, and they were answered *numero*, or *in Pecuniis numeratis*, untill afterward for the avoiding of corrupt Money, they were reserved in *blanc* or white Money, which, as before is observed, was intended either of pure Silver, (or at least Silver reduced to the Alay of Sterling) and then whitened or blanched, as is used in the Mint to this day, for all Sterling Money: I shall not much contend whether it were the one or the other, but for the most part in this Discourse I shall suppose it fine Silver.

But

But although Firmes were reserved in Money, as the best and commonest measures of values, yet it appears by *Tilburiensis*, Lib. I. Cap. A quibus & ad quid instituta fuit Argenti examinatio; that it was in those ancient times of King W. 2. and H. I. usually practised that those Firmes should, according to their values be answered in Cattle, Corn and other provisions; which perchance in its first institution might be a convenience to the King, to have his Family furnished with provisions *in specie*, and to the Country, among whom Money was not then very plentifull, and they could better answer their Rents in Provisions.

And to the end that an equation might be made between the Rents reserved in Money and the Provision delivered by the Tenants in lieu thereof, the same *Tilburiensis* tells us, there were certain prices and rates set upon provisions, that the Tenant might know what to pay, and the King's Officers might know what to receive. As for Wheat for

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100 men 12*d.* for a fat Ox 12*d.* &c.
which it seems were delivered to the
hands of the Sheriff who, if he fir-
med the County, might retain it to
his own use; but if he firmed it not
he accompted to the King, for these
Provisions or their values, as he did
for other rates of the County col-
lected by him.

But as for Cities and Franchises
that were granted out to Firme, be-
cause they had not Provisions of
this nature to answer, they paid
their Rents in Money.

Thus, it seems, the King's Firmes
of Rents of his Firmors and Tenants
in the Country were answered in the
time of King *William* the first and
William his son. But in the time
of *H. I.* the Tenants were weary
of answering their Rents in provisi-
ons, and the King's foreign occa-
sions called rather for a supply of Mo-
ney, and so the Rents were answer-
ed by the Tenants as formerly in
Money according to the tenour of
their reservations, and the delivery
of Victual and other Provisions in lieu
thereof ceased.

CHAP.

CHAP. V.

Concerning the manner of collecting the King's Revenues of the County, and the several kinds of them with their several Titles.

TH E Sheriff of the County had a double Office: 1. As a Minister of Justice under the King for the preservation of Peace, and Writs issuing from the King's Courts. 2. As the King's Bayliff of his Revenues arising in the County, which was of two kinds.

1. The improving and letting, and sometimes stocking of the King's Demesnes, and such Lands as were seized into the King's hands (other than such as belonged to the Escheator, as Wardships and Escheats.) And hence it is that there are upon the accompts, especially of *Buckingham*

Dham

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ham and Bedford, allowances made
to the Sheriff of that County *ut.....*
Comitatus.

2. The second part of his Office was in collecting of the King's Rents of his County, which sometimes he did as *Custos* or Bayly; sometimes *ut Firmarius*, *viz.* he took the Rents to his own use, and answered the King a certain Firme or Rent at his own peril, whereof more in the ensuing Discourse. Now concerning the kinds of the King's Revenues arising in the several Counties, we are to take notice that they were of two kinds, *viz.* Annual or Casual.

The Annual Revenue was again of two kinds, *viz.* Fixed and Certain, or Casual and Uncertain.

The Annual, Fixed and Certain Revenue of the Counties were of these kinds.

1. The King's Demesnes that were in his own hands, or let at Rack rents to Tenants, whereof I have before spoken, and they make not

not much for that purpose I aim at.

2. Firmes, which were of two kinds, *viz.* Gross Firmes which were charged upon particular persons, or Cities, or Towns, and so charged in the great Roll; as thus, *Philippus d'Aura debet 2 Marc. de reditu unius virgate terre.* And these were thus charged upon these two reasons: 1. Either because they were never parcel of the Sheriffs Firme of this County, (*de quo infra,*) but great Firmes written out to the Sheriff to be answered by the persons upon whom they were charged. 2. Or else they were such as happened to be reserved after the Firme of the County was reduced to certainty and answered by the Sheriffs. Or else, Secondly, they were small rents commonly called Vicontiel Rents; the Particulars whereof we shall enumerate under their several heads in due time.

3 Common Fines, at first imposed upon Townships, upon several occasions, as for *Bon pluder*, for Suit and Ward, for excuse of attending

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the Sheriff's turn : and these grew
in process of time to be fixed and
settled Revenues. And these again
were of two Sorts ; such as came
within the Title of *Firma Comita-*
tus, and were written out under
that general head, *viz.* *sub nomine*
Vicecomitis : And some again were
written to the Sheriff in the parti-
cular charge of such and such Town-
ships and Lands, and so charged
upon the Towns by the express
words of the process.

4. Arrentations of Assarts and
Purprestures in Wasts and Forests
set by Justices in *Eyre*, which for
the most part were written out in
charge against the particular Lands
upon which they were charged :
and some perchance were deman-
ded in a gross Summ, among other
small Rents *sub nomine Vicecomitis*.

5. *Crementum Comitatus*, or *Fir-*
ma de cremento Comitatus ; which
were some improvements of the
King's Rents above the ancient Vi-
contiel Rents, for which the Sheriff
answered under the title of *Firma*
Comi-

Comitatus. And this *Crementum Comitatus* or the several small advances of the old Vicontiel Rents, were answered under the title of *Crementum Comitatus*, or *Firma de cremento Comitatus*. But those kinds of Firmes *de cremento* are onely found in the Counties of *Bedford*, *Bucks*, *Norfolk*, *Suffolk*, *Warwick*, *Leicester*, *Wigorn* and *Gloucester*: Certain other Summs annually charged in groſs upon the Sheriff for certain other small or minute Rents under several titles in several Countries; as, *De Cornagio*, *de Wardis*, *Castle de Firma*, *Purpreſt & Escaet de diversis Firmis*, *de minutis particulis*, *Serjancia de tr̄is assert infra divers forest*: all which were charged in groſs Summs upon the Sheriff, and *sub nomine Vic.* without expressing any particulars, or upon whom they were charged, which because they were not common to all Countries, but varied according to the various usage of several Countries, I shall not at large handle, but shall content my ſelf with the en-

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quiry into those that were the com-
mon charges of the Sheriffs of every
several County, *viz.* the *Corpus Co-*
mitatus, and the *Proflua Comitatus*.

The Vicontiel Rents that made
up the Sheriffs Firme of the Body of
the County, came under various Ti-
tles and Denominations in several
Counties, *viz.*

1. *Reditus Affize in Cumber-
land, Hertford, Surry.*
2. *Firme & feodi Firme in Cum-
berland, Northumberland,
Nottingham, Stafford.*
3. *Firma antiqua in Huntington.*
4. *Albe Firme in Norf. & Suff.*
5. *Blanch Firmes in Ebor', &
Suff.*
6. *Blanc Rents in Kent.*
7. *Albus Cervus in Dorset.*
8. *Auxilium Vicecom' in Cant',
Cumbr', Essex, Hunt', Leic',
North', Sussex, Warw', Wilts.*
9. *Auxilium ad Turcum Vicecom'
in Devon.*
10. *Hidage in Berks, Bedf. Bucks,
Oxon.*

11. *Presta-*

11. *Prestatio pro pulchre placitando in Bedf³*, Bucks.
12. *Secta & Warda in Bedf³*, Bucks.
13. *Visus Franci plegii in Bedf³*, Bucks, Cant', Hunt', Essex, Hertford, North'ton, Somer-set, South'ton, Stafford.
14. *Certitudines in Berks, He-ref³, Rutland.*
15. *Certi redditus in Lincoln, Leicester, Somerset, South'ton, Warwick & Wilts.*
16. *Certi redditus ad communem finem in Derby, Nottingham.*
17. *Redditus pro Warda Castri in Cant', Northum', Oxon, Norf³, & Suff³.*
18. *Redditus ad Turnum Hundre-di in Dorset.*
19. *Finis antiquus in Essex.*
20. *Finis pro secta Curie relaxand^b in Berks & Oxon.*
21. *Communes fines in Glouc', Herel³, Herti³, Surry, Suffolc, Salop.*
22. *Fines Aldermannorum in Suf-fex.*

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23. *Turnum Vicecom' in Essex & Hertf'.*
24. *Setta Burg. & Vill. in Cant.*
25. *Suit Silver in Staff'.*
26. *Hundred Silver in Norf'.*
27. *Faith Silver in Staff'.*
28. *Pannel Silver in Norf'.*
29. *Ward Silver in Essex.*
30. *Certum lete cum Capitag' in Norf'.*
31. *Leet fee in Suff'.*
32. *Soken fees in Suff'.*
33. *Mott fee in Salop.*

These are the general Titles of those Vicontiel Rents that usually came under the Title of *Firma Comitatus*, which were written generally *sub nomine Vicecom'*, without expressions of the particulars : But the Sheriff that had a particular Roll of these Vicontiel Rents, delivered in that Roll many times upon his Accompts, though not written especially in charge under those names, or in particular by the Summons of the Pipe : And thus much concerning the certain Annual Revenue,

2. The uncertain Annual Revenue was the *Proficuum Comitatus*, which in ancient times when most of the Law-suits were transacted in the Counties and Hundred-Court, was a considerable Revenue. But since that time, *viz.* about the beginning of E. I. when much of that business was transacted at the great Courts, this profit of the County sunk to very little. And in my enquiry touching this part of the Revenue, I shall First set down what it was not : Secondly, I shall set down what it was, and how it did arise.

1. Touching the former of these what it was not; I say, most clearly it was not that profit which is now the onely considerable profit of the Sheriff's employments, *viz.* the Fees and Perquisites for the execution of Writs, and Proceses and Execution issuing out of the King's Courts. For,

1. Untill the Stat. of 23 H.6.c.10. there were no Fees at all by Law due for any execution of Proceses or Warrants

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Warrants for the same. Till the
Stat. of 29 El. 2. there were no Fees
allowed by Law for levying of
Debts or Damages: But by the ex-
press provision of the Stat. of *West-
minster* the first, the Sheriff was
bound to execute the King's Proces-
s without any Fee, which is no other
but a declaration of the Common
Law.

2. In no Viscontil Schedule or Ac-
compt of the County that ever I
could see or hear of, is there any
Accompt for Fees for execution of
Proces-, or any mention thereof.

3. If the Sheriff did in those el-
der times take any Fees for executi-
on of Writs, there was no colour of
reason that he should accompt for
that: and if he did take more than
a reasonable recompence for his
pains, it was more than could be
justified, and not at all due to the
King.

II. But now, as to the Second
enquiry, what this *Proficuum Comi-
tatus* was: And it seems very plain
that it was made up principally by
these

these particulars, as most evidently appears by divers accompts of Sheriffs in ancient times, when they accompted *ut Custodes* or *Ballivi*, not *ut Firmarii*, viz.

i. The Fines, Issues and Amercements, and other Profits of the County-Courts, which in those ancient times were very considerable, for it held Plea in all Writs that were Vicontiel, directed immediately to the Sheriff out of the Chancery, viz. by Justices; and many times not onely personal Suits were removed thither out of inferiour Court-Barons and Hundred-Courts, but also Pleas Real, viz. Writs of Right; and in ancient time many real Actions, especially Writs of Right were determined in the County. And therefore it is frequent in the old Schedules of *Prosticua Comitatus*, especially in *Yorkshire* in the times of R. I. and King John, such as these, viz. *De J. S. pro licentia concordandi demimark.* *De J. S. pro Warrantia Essonii 2s.* and sometimes a Mark *pro mi'a Comitatus*, sometimes

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times 10s. *quia retraxit se, Demimark.* *De pretio bonorum per distringas demimark.* *Pro transgressione 2s.* *Pro falso clamore demimark,* &c.

So that it appears in the accompt of 20 *Johannis Regis*, the profits of the bare County-Court of *Tork* for one half year amounted to 31*li.* which is more than 100*l.* in a just estimate at this day.

2. The Profits of the Sheriffs Turns, or the Sheriffs Leets, which had Conuance of matter Criminal, as his County-Court was for matters Civil : and the Profit consisted,

1. In Amercements of Sutors that made default.

2. In the Fines and Amercements of such as were convict of offences inquirable in the turn; as Nusances, Bloudshed, Assize of Bread and Beer, &c. and these arose usually to a considerable Summ yearly.

3. The Profits of the Hundred-Courts and Wappentake-Courts; the Profits whereof consisted in the Fines, Amercements and other Perqui-

Perquisites of the Hundred-Court, which the Sheriff sometimes took in kind ; sometimes he let it to Firme. These Baylywicks of these Hundreds, and with them the Profits and Perquisites of Courts were sometimes let to Firme by the King, and in such cases the Sheriff accompted *Proficua Ballivatus*, which often-times arose to very considerable Summs. In the time of H. 3. the Firmes of the Baylywicks of the Hundreds in *Torkshire*, beside *Stancliff* and *Strafford*, were let for 100l. 6s. 8d. *per annum*, which was then a considerable Summ, and amounts now in Sterling Money to thrice as much. But as the busines and jurisdiction of the Hundred-Courts sunk gradually in their employment, (whereby the Perquisites now do but little surmount the charge of keeping them) so now by the Stat. of 23 H. 6. cap. 10. the Sheriff is restrained from letting the Baylywick to Firme ; and most of the Hundreds, at least in many Countries, are disjoined from the County
and

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and granted out, some in Fee-farm, and some otherwise, though there have been frequent attempts of rejoining them to the Sheriffs by acts of Resumption.

And these are the Profits that made up the *Proficuum Comitatus*, for which the Sheriff most commonly in ancient time answered as *Firmarius* at a certain Rent, though sometimes he accompted for it as *Custos* or *Ballivus* as shall be shewn. And I know no other Perquisite that made up the *Proficuum Comitatus* but what is above mentioned; onely in *Northumberland* there were some Castle-gard-Rents that were in truth *Vicontiel Rents*, and in their propriety and nature belonged to the *Corpus Comitatus*, which yet by constant usage were usually answered among the *Proficua Comitatus*. And thus far concerning the annual Revenue of the County, both Certain and Uncertain, chargeable upon the Sheriffs collection.

2. The Revenue Casual consisted of many Particles under various Heads

Heads or Titles, *viz.* Debts drawn into the Pipe, and thence written out unto the Sheriff. Fines voluntary or compulsory. Seisures of Lands and Compositions, &c. they may be reduced under these three Heads at this day.

1. The Debts written out to the Sheriff from the several Offices, *viz.* the two Remembrancers, Clerk of the Pipe, &c.

2. The Summons of the Green Wax, written to the Sheriff with the Eſtreats from the Treasurer's Remembrancers.

3. The foreign Accompt, or Seiſures of Lands for Debts or Forfeitures.

As touching escheated Lands and Wardships they came under the Escheator's charge, and the Profits thereof rarely answered by the Sheriff, unless for some few ancient Escheats.

CHAP. VI.

*Concerning the manner how
the Annual Revenue of the
County was usually answered
in the ancient times untill
10. E. I.*

Having shewed what the Annual Profits of the County consisted of; I shall now descend to the manner how it was anciently answered. The Sheriff, as hath been shewn was the King's Bayly for the collecting of the King's Revenue: And touching the manner of his collecting and answering them, and therein principally concerning those two great parts of the Annual Revenue, viz. the *Corpus Comitatus*, or when it was in Firme, the *Firma corporis Comitatus*: And the *Proficuum Comitatus*, and when it was in Firme, the *Firma de proficuo Comitatus*; both which shall be hereafter

hereafter more fully explained.

These Profits were anciently, and are to this day, answered at two Terms in the year, *viz.* Michaelmas and Easter.

But to enable the more effectual levying of them, there always issued to the Sheriff before Easter and Michaelmas, out of the Exchequer a Writ called the Summons of the Pipe, which had annexed to it the charge or Summs for which the Sheriff was answerable, *viz.* those which were charged upon himself *sub nomine Vicecomitis*, and those which are charged upon others. The Form of the Writ is recorded in the black Book of the Exchequer, *Lib. 2. cap. Qualiter sicut Summonitiones*; which continue to this day, *viz.* *Rex Vic' Ebor' Salutem. Vide sicut te ipsum & omnia tua diligas quod sis ad Scacarium nostrum Westm' in Cro' Sancti Michaelis, vel in Cro' Claudi Paschæ, & habeas ibi quicquid debes de vetere firma vel nova: Et nominatim hæc debita subscripta.* And then the whole charge is inserted which

E common-

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monly began with these annual Re-
venues, viz.

De Corpore Comitatus

(or if it were in Firme)

De Firma de Corpore Com. 100 bl.

De Numero Comitatus 10

De Proficuo Comitatus

(or if in Firme)

De Firma de proficuo Com. 50

And then the Summ in gross charged
upon the Sheriff for divers small
Rents, and then afterwards all those
Firmes that were charged upon par-
ticular persons *seriatim* and in or-
der.

And according to the order where-
in they were written out to the She-
riff, accordingly in effect were the
Accompts passed, and the Entries
made thereof in the great Roll of
the Pipe, onely the particulars in
the Writ was their charge of the
Sheriff, unto which he was to give
his answer upon his Accomp^t, and
then there are entred his discharges.

And

And this Firme continues there to this day, with such alterations as are hereafter mentioned: and therefore the Ordinance or Statute *in Libro Rubro Scaccarii, fol. 242.* made in 54 H. 3. is nothing else but the stable and fixed method for writing the great Roll, observed both before and since that day.

Primo, Scribatur Corpus Comitatus, deinde Eleemosyne constitute, & Liberationes & Bri'a prisci Vicecom' sicut semper fuit consuetum. Deinde oneretur Vic' de Firmis pro proficuo Comitatus vel de proficuis: Deinde scribantur omnes Firme tam maiores quam minores, &c.

And although the certain *Debet* of the Sheriff could not be known before the finishing of his Accompt, because it could not be known what he levied, and what not; and what he had paid, and what not; (which Accompt was not untill the end of his year) yet it seems there was anciently an estimate what this constant charge of the annual Revenue amounted unto, and what the con-

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stant allowances amounted unto, ac-
cording to a *medium*, or possibly
according to those Firmes and gross
Summs which were charged imme-
diately upon the Sheriff *sub nomine*
Vicecomitis; and these Summs were
paid into the Exchequer at the re-
turn of the Writ of Summons of
the Pipe, and they were, and are
to this day called *Profre Vicecom'*,
or the Sheriffs Proffers. And by the
Statute of 51 H. 3. called *Statutum*
de Scaccario, those proffers are ap-
pointed to be paid on the morrow
of St. *Michael*, and the morrow *post*
Clavsum Paschæ; and the payment
of these proffers are continued to
this day: But although they are
paid, yet if upon the conclusion of
the Sheriffs Accompt, and after the
allowances and discharges had by
him, it appears that he be in surplu-
sage, or that he is charged with more
than indeed he could receive, he
hath sometimes, and for the most
part, all his proffers paid or allow-
ed to him again: and so indeed it is
but a mock-payment, a payment
kept

kept on foot to maintain the old method of his Accompt, but is in effect but so much Money lent, for he hath it (and justly enough) allowed to him back again: the reason and justice whereof shall be shewn hereafter. And now to return again from whence we digressed, I shall now search out the meaning of these Firmes, *Corpus Comitatus bl.* and *Numerus Comitatus*, and *Firma de Corpore Comitatus*, and *Proficua Comitatus*, and *Firma de proficuo Comitatus*, I mean as they relate to the Sheriffs Accompt for what the things were is sufficiently discovered before.

Therefore as to the *Corpus Comitatus*, I have already shewn in the precedent Chapter, what it consisted of, viz. the Vicontiel Rents of the County; and they consisted of two sorts of payment, viz. those that were answered in *blanch* Money, and those that were answered in Money numbred. And this ordinarily made two titles of the Cor-

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plus Comitatus in most Counties, viz.
where there were Firmes of these
differing natures, and they are then
thus noted, viz.

De Corpore Comitatus 100*l. bl.*
De Numero Comitatus 50

And they were written out thus generally, without expressing the several Vicontiel Rents, but onely the gross Summs what they amounted to *blanc*, and what they amounted to *numero*, or *de numero Comitatus*. And the Sheriff upon his Accompt was used to bring in a Vicontiel Roll, containing these particular Vicontiel Rents, what they were and what he had levied.

By this it appears that in the first constitution of this Vicontiel Accompt the Sheriff accompted for these Rents as Bayly or *Custos*, and answered what he levied though they were written out, and stood upon the great Roll all in a lump, and when the Sheriff accompted thus, he accompted as *Custos* or Bayly.

But

But in process of time (but that time very ancient) the Sheriff for the time being took the *Corpus Comitatus* or Vicontiel Rents to Firme, which Firme for the most part amounted to very near the entire quantity of the Vicontiel Rents. And this Firme in many Counties was very ancient, for we find them mentioned in the Pipe-rolls of the time of King *John* and *R. I.*

And by this means the Sheriff was to answer at his peril his Firme, for it became his own debt, and he was to gather up the Vicontiel Rents to his own use to make himself a Saver.

The Sheriffs Commission hereupon was with the reservation of the Firme, and although we have not memorials of all those reservations, yet of some we have.

Inter Communia of 19 E. I. Bedf. Bucks, Rex 16. Jan. Anno 19. Commisit Will. Turvil Com' Bedf. & Bucks cum pertinent' custodiend' quamdiu Regi placuerit reddendo inde per annum quantum Johannes Pa-

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Iam nuper Vicecomes eorundem red-
dere consuevit.

And by little and little this grew into a usage, the succeeding Sheriff answering the Firme of the County, and of the Profits of the County as his predecessor had done : whereby the *Firma Comitatus* and the *Firma de proficuis Comitatus* became as settled Firmes charged upon the Sheriff though there were no express reservation of it upon his patent or Commission of Sheriff.

And because these Firmes were in their first reservation proportioned to the value and nature of those Rents, which now the Sheriff had, as before the King had them, *in specie* ; hence the Sheriffs Firme of the County or Body of the County as it was proportionable to the same, answered for the Vicontiel Rents ; so it was proportioned to their nature, *viz.* because some of the Vicontiel Rents were in *blanc* Money, the Sheriffs Firme corresponding to that was answered in *blanc* Money : and some of those rents being answered

swered *numero*, the Sheriffs Firme corresponding thereto was answered *numero*.

And by this Accompt the charge both upon the Summons of the Pipe and upon the great Roll was altered viz. whereas the former Style of the charge was *De corpore Comitatus blanc & numero*, now it was changed, viz.

De Firma de corpore Com' 100l. bl.

De numero Comitatus 40

Ad thus the manner of the charge stood for the times of *H. 3.* and *E. 1.* and for some time before, at least in some Counties: and so it continues to this day with such alterations as shall be shewn.

And as the *Corpus Comitatus* thus by usage grew a Firme, or Rent charged upon the Sheriff, so also did the *Crementum Comitatus*, in those Counties where such *Crementa* was answered, viz.

<i>De Firma Comitatus</i>	100l.
<i>De numero Comitatus</i>	40
<i>De Cremento Comitatus</i>	10

All being governed by the word *Firma*: For, as I have said, a long letting of these Vicontiels to Firme, had brought them to be a settled charge, charged upon, and answered by the Sheriff; and he gathered up the Vicontiels to his own use, to make himself a Saver, and to make good his Firme. And thus much concerning the answering and altering of the charges of the Vicontiels, or the *Corpus Comitatus* both before and after it was in Firme.

2. As concerning the *Proficuum Comitatus*, the proceeding was much the same as that concerning the *Corpus Comitatus*.

In the ancienter times, when the *Proficia Comitatus* was at all answered by the Sheriff, it was answered by him, as *Custos* or Bayly upon Accompt

Accompt: Though in some ancient Pipe-rolls, for some Counties we find no distinct mention of it; as in the Pipe-roll of 19 R. 1. Glouc. *Herbertus reddit compotum de 372l. 14s. 6d.* bl. de *Firma Comitatus*. The like, *ibid. 13 Johannis*. But very frequently afterwards the Sheriffs, when they had the *Corpus Comitatus*, or the Certain Annual Revenues under a Firme, yet answered the *Proficua Comitatus* as *Custos* or *Evyly*: for instance, *Pipe-roll 9 R. 1. Bedf. & Bucks, Simon de Bello campo reddit compotum de 369l. 19s. 11d. bl. Et de 79l. 8s. 1d. numero, de Firma Comita*, without mentioning the *Proficua Comitatus*.

But in the Pipe-roll 25 H. 3. Bedf. & Bucks, Paulinus Pejor, *ut Firmarius reddit compotum de 369l. 19s. 11d. bl. & de 108l. numero de Firma Comitatum*.

Idem Vicecomes reddit compotum de 100 marc' pro proficuo Comitat.

And *Anno 44 H. 3. Alexander Hampden, ut Firmarius reddit compotum de 369l. 19s. 11d. bl. & de 108l.*

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108l. numero, de Firma Comitatuum.

*Idem A. reddit compotum de 220
marc' pro proficuo Comitat' sicut con-
tinetur in originali.*

And in 51 H. 3. Galfridus Rus-
ut Firmarius de anno 50 reddit com-
potum de 369l. 19s. 11d. bl. & de
108l numero de Firma Comitat'.

*Idem Galfridus reddit compotum
de 180 marc' pro proficuo Comitatus
de anno 50. sicut continetur in quo-
dam Rotu attachato originali ejus-
dem anni.*

And in the year following, Ed-
vardus filius Regis primogenitus, Bar-
thol. de Irene Subvicecomes ejus red-
dit pro eo per breve Regis, compo-
tum de 369l. 19s. 11d. bl. & 108l.
numero de Firma Comitatus hoc anno.

*Idem E. Vic' non reddit de aliquo
proficuo Comitat' quia Rex ei commi-
fit dictos Comitatus respond' inde per
annum de antiqua Firma corporis, si-
cut continetur in originali anni pre-
cedentis.*

And so in the great Roll of 50 H.
3. Glouc. Reginaldus de Ale de 372l.
14s. 6d. de Firma Com'.

Idem

*Idem Vicecomes reddit compotum de
80 marc' pro proficuo Com' & exit'
ville & nundinorum & Hundredi de
Wenham sicut continetur in quodam
Rotulo, &c. and so it continued in
the time of E. I.*

By which it is evident, 1. That sometime there was nothing at all answered *pro proficuis*, but it was cast into the Firme of the County. 2. That although the body of the County, consisting of a certain yearly Revenue was in Firme, yet oftentimes the *Proficia Comitatus* were not in Firme, but the Sheriff accounted for them *ut Custos*, sometime higher, sometime lower, as the profits arose.

But in process of time the *Proficia Comitatus*, at least in some Counties, fell under a Firme, though in some Counties sooner, in some latter; and having once begun to be in Firme, the succeeding Sheriff took it as his predecessor left it; and so it became in time a settled Firme, though not expressly reserved upon the Patent of every Sheriff.

And

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And yet in such cases it was become a settled Firme, by usage and custome; yet when the Sheriff found that his Firme was too great for these profits (which were casual, sometimes more, sometimes less) he was in those elder times admitted to accompt *ut Custos*, without being bound to answer his entire Firme, unless he saw fit. But that was rarely in use after the time of H. 4. and accordingly it seems to be intimated in that ordinance of 54 H. 3. above mentioned, for writing the great Roll of the Pipe, *viz.* *de Firmis pro Proficuis, vel de Profitibus.* And this shall suffice for the unriddling of the Sheriffs Accompts till the 10 and 11 Ed. I.

CHAP.

CHAP. VII.

The Second Period of the Sheriffs Accompts, viz. How they stood from 10 E. r. until 34 H. 8.

WE have in the former Chapter seen how the Statute of the Sheriffs Accompts stood in relation to the annual Revenue of the County, whether Certain or Uncertain, and both stand now reduced under a Firme, *viz.*

1. The *Corpus Comitatus* answered under a Firme; partly *blanc*, and partly *numero*.

2. The *Proficua Comitatus* gradually also reduced into a Firme entirely *numero*; but with a liberty for the Sheriff to ease himself of the excess of his Firme above the profits, by submitting to an accompt of these profits as Bayly or *Custos*.

It

It fell out in process of time that the Kings of *England* granted away many of those Vicontiel Rents, and the Lands upon which some of them were charged, whereby the Sheriff lost much of what was to make up the Firme of his County. And although the Sheriffs, upon shewing thereof upon their Accompts, had an allowance of that which was so granted away, yet it made a trouble and disorder in the Sheriffs Accompts.

And therefore it was necessary to have some provision for the same, but this onely concerned that part of his Firme which was of the *Corpus Comitatus*, or the Firme of the Certain Annual Revenue. Therefore by the Stat. of *Rutland* 10 E. I. this provision is setled.

Quod non scribatur de cetero corpora Comitatum in Rotulis singulis, quin scribantur in quodam Rotulo annuali per se, & legantur singulis annis super compotum Vicecomitis singula, viz. in singulis Comitatibus, ut sciatur si quid nobis possit accidere

in quocunque Comitatu. Remanent' vero eorundem Comitatuum post terras datas scribatur in Rotulis annualibus & onerentur inde Vicecomites. In quibus quidem remanentibus allocentur liberationes, eleemosyne, &c. Scribantur etiam in eisdem Rotulis annualibus Firme Vicecomitum, profici Comitatus, firme Serjantiar' & Assartor', Firme Civitatum, Burgorum & Villarum, & alie Firme de quibus est responsum annuatim ad Scaccarium predictum. Scribantur in eisdem omnia debita terminata & omnia grossa debita de quibus spes est quod aliquod inde reddi possit. Item omnia debita quæ videntur esse clara, titulum de novis oblatis. Nihil scribatar in Rotulo Annuali nisi ea de quibus est spes, &c. De Firmis vero mortuis & debitibus de quibus non est spes, fiat unus Rotulus, & irrotulentur & legantur singulis annis super Compot' Vicecom' & debita de quibus Vicecomes respondebat scribantur in Rotulo annuali & ibi acquietentur.

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And by this Act these alterations
were made.

I. the state of the yearly Rents
which heretofore made up the *Corpus Comitatus* was examined, and
it was considered what parts there-
of had been granted out by the
King, to the end that the Sheriffs
Firme of the body of the County
might be abated with respect to
those grants; which reduction of
the Firme is stiled *Remanentia Firme*
post terras datas.

II. The old stile of *Corpus Comi-
tatus* was now put out of the charge,
and whereas formerly the Sheriffs
charge was *De Firma de corpore Co-
mitatus*, now it was changed, and
the charge was *De remanente Firme*
post terras datas: And according-
ly it was forthwith altered in the
great Roll, onely when those re-
maining Rents that were to make
good this *Remanentia Firme*, did
consist of Rents *blanc*, or of Rents
numero onely, it was according-
ly

ly written, viz. in this manner.

De remanente Firme de Com' 100l. bl.

De numero Comitatus 50

III. There was to be extracted out of the great Roll the old Rents that made up the *Corpus Comitatus* and the title thereof, and those Firmes that were *Firme mortue* or *obsolete*, illeviable Firmes, and those debts that were desperate, and the great Roll of the Pipe (which was written every year) was to be disburthened of them, and they were to be transcribed into another Roll called an Exannual Roll.

This Exannual Roll to be yearly read to the Sheriff upon his Accompt, to see what might be gotten: and if any thing appeared to be good, then the same to be recharged again upon the great Roll of the Pipe.

IV. But there was no alteration hereby made of the *Firma de Pro-
ficiis*: So that by this Act as in relation to the Firmes and Rents of

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the County these things were done.

1. Those Firmes or Rents that were wholly granted away, were wholly put out of charge, whether they were assart Rents or Firmes charged upon particular Persons or Land, or that were within the Sheriffs Firme as Vicontiel Rents. 2. If any Vicontiel Rents that made up the Sheriffs *Firma de corpore Comitatus* were granted out, the Sheriffs Firme was abated in respect thereof. 3. If there were any Obsolete or Dead Rents, that were either Vicontiel Rents or charged upon particular Lands or Persons which had not been a long time answered, they together with the *Corpus Comitatus* were removed out of the Annual Roll and transmitted into the Exannual Roll read yearly to the Sheriff, to see whether any hope of levying them: but their writing out in charge in the great Roll suspended till they might be after discovered to be leivable.

And accordingly presently after the making of this Act, the Firme of

of the Sheriffs charge in the Summons of the Pipe and the entry thereof upon the great Roll was changed, and this memorial is made upon the Pipe-roll for every County.

Corpus hujus Comitatus non annotatur hic, sed annotatur in quodam Rotulo in quo scribuntur omnia corpora Comitatuum Anglie in manu Regis existentia simul cum Firmis mortuis & debitis quasi desperatis quæ debent singulis annis legi & recitari super Comptum Vic' ut sciatur quid inde accidere possit Regi ex quacunque causa que sunt in Thesauro. In quibus etiam continetur quod inde Vicecomites onerentur in compotis suis predictis de remanentibus Firmarum Comitatuum post terras datas. Et quod in eisdem remanentibus allocentur liberations & Eleemosyne constitute & alie allocationes si quas Vic' habuerint per Br'ia Regis de eorundem exitibus.

And according to this Act and Memorandum the great Roll was certified : for instance, before this Act the great Roll for Gloucester did run thus.

J. F. reddit compotum de 37l.
13s. 6d. blanc. de *Firma Comita-*
tus.

But after this alteration it runs thus.

In the great Roll 12 E. I. Rogerus *de Lockington Vicecomes reddit compotum de 38l. 14s. 11d. blanc. de remanente Firme Comitatus post terras datas.*

Idem Vic' reddit compotum de 80 marc' de Firma pro proficuis Comita-
tus (which was the old Firme there-
of before 10 E. I.)

So again in the Pipe-roll 10 E. I. which was the Accompt of the year next before the making of this Act the Roll runs thus, *viz.*

Bedf. Bucks, Richardus *de Gol-*
lington reddit compotum de 319l.
19s. 11d. bl. & de 108l. numero, de
Firma Comitatus. Et reddit compo-
tum

tum de 180 marc' de Firma pro proficuo Comitatus sicut Johannes de Chedley reddere consuevit. In the Roll next after the making of this Act it runs thus.

Richardus de Gollington *Vic'* reddit compotum de 17l. 7s. bl. de remanent' Firme Comitatus post terras datas sicut supra continetur, & de 108l. de Firma numero.

Et Vic' reddit compotum de 100 marc' de Firma pro proficuis sicut continetur in Rot. 11: By which instances these things appear, viz.

1. That the *Firma de Proficuis* continued the same as before: For therein no alteration was made by the Stat. of Rutland.
2. That the Title of the *Firma de corpore Comitatus* was changed into the Title *de remanente Firme Comitatus post terras datas*.
3. That the quantity of the Firmes were reduced to smaller Summs with respect to those Firmes or Lands charged therewith formerly and since granted out.
4. That yet the Titles of *Blanc*

And according to this Act and Memorandum the great Roll was certified: for instance, before this Act the great Roll for Gloucester did run thus.

*J. F. reddit compotum de 37l.
13s. 6d. blanc. de Firma Comita-
tus.*

But after this alteration it runs thus.

In the great Roll 12 E. I. Rogerus *de Lockington Vicecomes reddit compotum de 38l. 14s. 11d. blanc. de remanente Firme Comitatus post terras datas.*

*Idem Vic' reddit compotum de 80
marc' de Firma pro proficuis Comita-
tus* (which was the old Firme there-
of before 10 E. I.)

So again in the Pipe-roll 10 E. I. which was the Accompt of the year next before the making of this Act the Roll runs thus, *viz.*

*Bedf. Bucks, Richardus de Gol-
lington reddit compotum de 319l.
19s. 11d. bl. & de 108l. numero, de
Firma Comitatus. Et reddit compo-
tum*

tum de 180 marc' de Firma pro proficuo Comitatus sicut Johannes de Chedley reddere consuevit. In the Roll next after the making of this Act it runs thus.

Richardus de Gollington Vic' reddit compotum de 17l. 7s. bl. de remanent' Firme Comitatus post terras datas sicut supra continetur, & de 108l. de Firma numero.

Et Vic' reddit compotum de 100 marc' de Firma pro proficuis sicut continetur in Rot. 11: By which instances these things appear, viz.

1. That the *Firma de Proficuis* continued the same as before: For therein no alteration was made by the Stat. of Rutland.
2. That the Title of the *Firma de corpore Comitatus* was changed into the Title *de remanente Firme Comitatus post terras datas*.
3. That the quantity of the Firmes were reduced to smaller Summs with respect to those Firmes or Lands charged therewith formerly and since granted out.
4. That yet the Titles of *Blanc*

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and *Numero* continued or were omitted as the nature of the Vicontiel Rents that remained ungranted were, *viz.* When all the *blanc* Rents were granted out, the Firme *de remanente* was answered onely *numero*. Where all the Rents *numero* were granted the Sheriff answered his Firme wholly *blanc*. If part of his Rent *blanc* were granted and nothing of those Rents that were answered *numero*, he answered the remaining part of his Firme *blanc*, and the entire residue *numero*. For the Sheriffs Firme of the County before, and *de remanente* now, did answer to the quantity, and also to the nature or quality of those Vicontiel Rents that he was to receive to make good his Firme.

But abating that one alteration from *Firma corporis Comitatus* to *de remanente Firme*, and the abridging of the Firme as before, and the discharging both of the Summons of the Pipe and the great Roll of those charges that were transcribed into the Exannual Roll,

the

the rest, both of the charge and great Roll continued as before.

But notwithstanding this provision gave some ease to the Sheriffs in relation to those Firmes, yet the charging of them with these Firmes became a matter of continual complaint, for that they were still charged with these Firmes, yet many of the Rents and benefits that should make good their Firmes were sold or became illeviable after *Rot. Parl. 25 E. 3. n. 39.* Item *pry les Commons que touts Vicounts que sont charge de certain Firmes pur les Counties ou ils sont Vicounts soient discharge de ceo post resceit de lour Baily per cause de Franchises grant Ronne breve soit mand al Treasurér & Barons descherquer quils faient due allowances al chescun Vicount sur le render de lour Accompts en chescun case la ou ils voilent quil soit reasonable.*

And in the same Parliament in 47, the Sheriffs of *Bedf.* and *Bucks* pray to be discharged of the Firmes of the Baylywick of their Hundreds, because those Baylywicks yielded

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yielded no profit: they are remitted to the Exchequer, *Rot. Parl.* 45 E. 3. n. 45. The Sheriffs of *Essex* and *Hertford*, pray an ease in respect of illeviable Firmes charged upon them, and Hundreds and Rents granted from them: answered, *Le Roy lour ad fait grace.*

By the Statute of 1 H. 4. cap. II. upon the complaint that the Sheriffs are charged with the ancient Firmes of their County, notwithstanding that great part of the profits of the same be granted to Lords and others: It is enacted that the Sheriffs shall accompt in the Exchequer and have an allowance by their Oaths of the issues of their Counties.

Rot. Parl. 11 H. 4. n. 46. & sequent'. The Sheriffs of several Counties complain that they are charged with several ancient Firmes which they are not able to levy, *viz.* *Essex* and *Hertf.* with the Firme of the County, and the Firme of the profits of the County: *York* with the Firme of the County *post terras datas*

datas. Devonshire with the remanent' *Firme Comitatus post terras datas*, the *Firma de Proficuis Comitatus*, and a certain Firme of 100 marks called blanch Firme. Norfolk and Suffolk with a Firme called *de remanent' Firme post terras datas*, and *Firma de Proficuo Comitatus*, whereof they complain that they cannot levy any thing, and besides the Hundred and Liberties granted out to the diminution of their profit; and pray remedy according to the Stat. of 1 H. 4.

They are referred to the King's Council to make such pardon and mitigation as they shall think reasonable.

Rot. Parl. 1 H. 5. n. 34, 35. The like complaints are made in the behalf of the Sheriffs, and prayed that they may have allowances out of their Firmes upon their oaths according to the Statute of 1 H. 4. But they have the like answer as before, *viz.* a reference to the Council.

But *Rot. Parl. 4 H. 5. n. 24.* and *4 H. 5. cap. 2.* The like petition is received

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received, *viz.* that by their oaths they may have an allowance of what the cannot levy out of those great Firmes that are charged *sub nomine Vic'*, *viz.* Firmes of their Counties, *blanc Firmes de novo incremento*, &c. But instead of redress they lost that benefit which the Statute of 1. H. 4. had before afforded them. And it is directly enacted that the Sheriffs shall have allowances by their oath of things casual, which lye not in Firme or annual demand: But of those things which lye in Firme annual, or demand annual, they be charged as Sheriffs in aforetime had been charged. And thus stood the busines of the Sheriffs Firmes untill the Statute of 34 H. 8. which is the next Period.

CHAP. VIII.

Touching the State of the Sheriffs Firmes from the Statute of 34 H. 8. till the fourteenth year of the Reign of King Charles I. which is the Second Period.

WE have seen in the former Chapter how the case stood with the Sheriffs Firme after the Statute of *Rutland*, and how the Statute of 4 H. 5. cap. 2. bound the Firmes charged upon the Sheriffs, closer upon them than for some years before : and so they continued till the making of the Statute of 34 H. 8. cap. 16.

This Statute recites those several Firmes charged to the Sheriff *sub nomine Vicecomitis*, viz. *de remanent' Firme post terras datas*: *Firma de Proficuo Comitatus*, and those other minute Firmes demanded

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ded *sub nomine Vicecomitis.* And
many of these particular small Rents
that made up these Firmes charged
upon the Sheriffs are lost or not le-
viable, or extinguished by Attain-
ders and Dissolutions of Monaste-
ries, and yet the Sheriffs continue
charged with their Firmes as for-
merly. It enacts,

1. That all Sheriffs that have no
Tallies of Record shall upon their
days of prefixion deliver in Rolls
or Schedules of Parchment contai-
ning the particular Summs of Mo-
ney which he hath or might have
levied as parcel of the said ancient
Firmes, naming the Person and
Lands of which they are to be le-
vied.

2. That after such Schedules de-
livered the Court shall have power
to allow and make deductions in
the said Sheriffs Firmes of all such
Summs of Moneys as the Firmes
shall be more than the Summs in
such Schedules shall amount unto.

3. And the Court shall proceed
to the recovery of such Summs be-
longing

longing to the said Firmes as are omitted in such Schedules.

4. That the Sheriff have allowance and discharge of all such illeviable Summs as are written to him in process.

5. That the Sheriff have allowance for entertainment of Justices, &c.

But this was but a temporary Act, and discontinued at the next Parliament. But a farther Act was after made for the ease of the Sheriff, especially in relation to those Firmes, viz. 2 and 3 E. 6. cap. 4. By this it is enacted,

1. That the Sheriff shall have such allowances and Tallies of reward as they had before the Act of 34 H. 8. or may accompt according to the Act at their election.

2. That they that accompt and take no Tally of Record shall be treated in the Exchequer as though the Act of 34 H. 8. were in force.

3. That those that have no Tallies of reward shall have allowance of the Diet of the Justices, &c.

4. That

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4. That all such Sheriffs as take no tallies of reward shall be discharged of all Firmes, Goods, Chattels, Profits, Casualties, &c. as they cannot levy or come by.

5. That all that have Tallies of Reward shall be discharged of all Firmes and Summs of Money that they cannot levy, except Vicontiels with which they are to remain chargeable as before the making of the former Act.

6. That Sheriffs shall have allowances of such Vicontiels as are extinguished by unity of possession in the Crown by dissolution of Monasteries.

7. That the Sheriff at his day of prefixion when he is sworn to his accompt, shall be sworn to deliver into the Court of Exchequer, Rolls or Schedules of Parchment containing all the particular Summs of Money which he hath levied or might levy of his Vicontiels or other Firmes, mentioning the Persons and Lands of which they are leviable, and the Court to take care for the levying

levying of such of the Vicontiels, or Firmes, which are omitted out of the Schedules, for saving the King's rights, and to make out process for the same.

Upon these Acts these things are observable.

I. That those Sheriffs that have Tallies of reward may not discharge themselves of their Vicontiels, *viz.* the *Remenant' Firme post terras datas*, and *Crō Comitatus*, and other small Rents charged *sub nomine Vicecomitis* (if he take his Tally of reward) by oath that he cannot levy it, or all of it.

II. But if such a Sheriff will wave his Tally of reward, he may accompt according to the Statute of 34 H. 8. and so discharge himself of his Vicontiels or Firmes thereof as well as other Firmes. And the truth is, I think, anciently there were some Sheriffs that had Tal-

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lies of reward, viz. *Tork*, *Nor-
thampton*, *Cumb'land*, *Hereford*, &c.

But since the making of this Act
they have waved them, account-
ing it more beneficial to take the
benefit of those Statutes upon their
accomp't, than to take their Tallies
of reward. So that now all She-
riffs have an equal benefit of the
Statutes of 34 H.8. and 2 and 3 E.6.

III. But those Sheriffs that had no
Tallies of reward might discharge
themselves of their Vicontiels and
Firmes *de remanente Comitatus*, as
well as other things that they could
not levy.

IV. That all Sheriffs, as well
those that had or had not Tallies of
reward might discharge themselves
of the casual charges, or their an-
nual uncertain charges; and conse-
quently might, and most ordinarily
after this Statute did discharge them-
selves of the entire Firme *de profi-
ciis Comitatus*, in case the profits of
their

their Counties did not surmount the charge that attended them. And by this means since the making of this Statute, those Sheriffs that were charged with the *Firma de proficuis* rarely if at all answered any thing for it, because they have always ascertained the Court that there were no such profits beyond the charge in collecting them: or that the charge of keeping the County-Court, the Turns, the Hundred-Courts, which were the things that made up the *Firma de proficuis*, surmounted the benefit.

V. And this making appear was no other than the oath of the Sheriff, that he could not levy this or that Rent, parcell of his Vicontiels, or that there were no *Proficia Comitatus, &c.* And this oath of the Sheriff hath always been the Warrant to discharge him of all or any part of his Firmes. By which means it hath most ordinarily come to pass that although the Sheriff hath paid

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in his profers at Easter and Michaelmas, yet when he comes upon his accompt he doth by his oath discharge himself of all his *Firma de remanente Comitatus*, and thereby most times the King becomes Debtor to the Sheriff for those Moneys which he received as profers, or Moneys due by the Sheriff upon his Firme.

And it is but reason; for the Statute gives him that just benefit to discharge himself by his oath of what he cannot levy or receive.

And yet though the Sheriffs have constantly by their oath discharged themselves of the entire *Firme de Proficiis Comitatus*, and of a great part of their other Firmes of the Vicontiels, or *Remenant' Firme*, and other Rents charged upon them in gross Summs, by swearing the illeviableness of some of those Vicontiels which make up those *Remenant' Firme Comitatus* and gross Summs, yet constantly after this Act and until the year of our Lord

1650 the entire Firmes, *viz.* the entire Firme of the *Remenant post terras datas*, and the entire Firme *de proficuis Comitatus*, were constantly written out in charge to the Sheriff upon the Summons of the Pipe, and entirely charged upon the great Roll, as they had ever been since the Statute of *Rutland*, and in the very same manner, though in truth it was for the most part but an idle piece of formality; for the Sheriffs constantly swear it off by virtue of the Statute. And thus by these Statutes the Sheriff had ease by his oath from that part and those parts of his Firmes that he sweared he could not levy.

But the truth is the Sheriffs have taken that part of the Statute which was for their ease, *viz.* to swear in discharge of their Firmes, but have two much omitted that other part of the Statute that was for the King's advantage, *viz.* the delivery in upon their oaths the Schedules of their Vicontiels: by which omission pos-

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sibly many small, but good, Rates have been lost since the Statute of 2 and 3 E. 6. which might have been preserved. Although possibly the far greater part were lost long before, as appears by the complaints of the Sheriffs, in relation to their Firmes, in the Parliament Roll of 11 H. 4. above mentioned. And thus the Sheriffs Firmes stood untill the 15th of King *Charles* the first.

CHAP,

CHAP. IX.

*The Third Period from the fifteenth year of King Charles the first untill the year of our Lord 1650. And how the Sheriffs Firmes and Ac-
compts stood in that inter-
val.*

BY an order of the Court of Exchequer made the 25th. Junii, 15 Car. I. upon the complaint of the King's Firmaur of decayed Rents it was ordered that the Clerk of the Pipe should cast up and compute, and severally and distinctly put in charge arrearages of decayed Rents and parcells of Rents, that process and commissions might be made forth thereupon by virtue of the order. But this proved uneffectual, for although the same was done

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accordingly, yet the King received
litte advantage thereby, neither did
it at all convenience the Sheriff, or
alter the charge written out in the
Summons of the Pipe, or upon the
great Roll. For the Firmes conti-
nued still in charge as before, with-
out any alterations: And though
somewhat of small consequence was
found out, which might help to
make good the Sheriffs Firmes in
some particulars, yet the same still
fell short, and the Sheriffs were still
enforced to make use of the advan-
tage of the Statute of 2 E. 6. to
ease themselves by their oath of il-
leviable Rents, till the year 1650.

CHAP.

CHAP. X.

The Fourth Period of the Sheriffs Firmes from the year 1650 unto this day, and how they were answered in that interval.

IN the times of the late troubles, *viz. 6. Julii, 1650.* there was an order made in the Court of Exchequer touching the Sheriffs Firmes and the Vicontiel Rents, which because it hath set a Rule in this Business, which to this day is observed, I shall here transcribe *verbatim.*

“ Whereas the Sheriffs of several
“ Counties of *England* stand char-
“ ged in the great Roll of the Pipe,
“ and have so stood charged anci-
“ ently with divers Summs of Mo-
“ ney

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" ney in gross, *sub nomine Viceco-*
" *mitis*, under the several Titles of
" *de rem' Firm' Com' post terras da-*
" *tas : de veteribus Cr'i Comitatus.*
" *De Firma de proficuo Comitatus.*
" *De Cornagio. De Warda Castris.*
" *De Firma perprestur' & escaet.*
" *De emersis Firmis. De minutis*
" *particulis. Serjantia de tr's As-*
" *sart' infra diversas Forestas, and*
" the like. And the said Sheriffs
" yearly, and from year to year,
" have been and still are comman-
" ded by the Summons of the Pipe,
" to levy the same as heretofore to
" the use of the Crown, so now to
" the use of the Common-wealth,
" without expressing where, of
" whom, for what cause, or out of
" what Lands or Tenements the
" same are particularly to be levi-
" ed by the said Sheriffs, or out of
" what particulars the said Summs
" in gross do so arise; in regard
" whereof, and that it hath hereto-
" fore appeared in the time of King
" H. 8. upon complaint of the She-
" riffs,

“ riffs, that a great part of the par-
“ ticular Rents and annual Summs
“ of Money, wherewith the said
“ Sheriffs do stand charged upon
“ their Accompts in gross, had been
“ long before that time payable by
“ Monasteries, Abbots, Priors, at-
“ tainted Persons, and the like,
“ whose Estates were come to the
“ Crown, and so ought to be dis-
“ charged by unity of possession;
“ and yet that the said Sheriffs were
“ still charged in gross with the
“ same, to their great burthen and
“ grievance; it was in the 34th
“ year of the said late King H. 8.
“ enacted by Parliament in the
“ case of these Sheriffs, and of all
“ Sheriffs for the time to come;
“ that the said Sheriffs should be
“ charged to answer upon their Ac-
“ compts yearly such Rents and
“ Summs of Money of the natures
“ aforesaid onely, as by the parti-
“ cular Rentals or Vicontiels, by
“ them to be yearly delivered in
“ upon oath, they should set forth
“ and

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" and make appear to be by them
" leviable ; and that they should
" be discharged of all the residue
" which they upon their Oaths
" should affirm to be illeviable, by
" virtue of the said Act of Parlia-
" ment, which hath been so con-
" tinued accordingly, ever since.
" Howbeit the Sheriffs have from
" time to time complained , and
" still complain against the writing
" forth of more to be levied and
" answered by them upon their Ac-
" compts , than such Rents and
" Summs of Money onely as ap-
" pears upon the oaths of their
" predecessors, Sheriffs, to be le-
" viable; and that the rest , ap-
" pearing to be illeviable, ought
" to be removed out of their said
" annual Roll , and Commissions
" thereupon to be awarded out of
" the Exchequer, for reviving the
" same according to the true in-
" tention of the said Statute of
" 34 H. 8. which the now Lord
" chief Baron, and the rest of the
" Barons,

“ Barons, taking into their serious
“ consideration, and being willing
“ and desirous, so far forth as may
“ stand with the preservation of
“ the due rights of the Common-
“ wealth, to give all fitting ease
“ and satisfaction to Sheriffs there-
“ in, according to the meaping of
“ the said Statute of 34 H. 8. and
“ according to the Statute of *Rut-*
“ *land*, 10 Ed. I. whereby it is
“ provided that nothing shall be
“ written out to the Sheriffs but
“ such Firmes and Debts whereof
“ there is some hope that some-
“ thing may be levied. And that
“ all dead Firmes and desperate
“ Debts are to be removed from
“ the annual or great Roll into the
“ exannual Roll, and not to be
“ written forth in process to the
“ Sheriff, but to be inquired of
“ to see if any thing may be revi-
“ ved. Whereupon the said Lord
“ chief Baron and the rest of the
“ Barons, calling before them the
“ Clerk of the Pipe, with the Se-
“ condan-

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" condaries, and the rest of the
" sworn Clerks of the said Office,
" and upon debate of the busines,
" finding it to be a work of great
" difficulty, labour and care, to
" examine and set forth in every
" County, from the Originals and
" Records of such antiquity to be
" compared with later times, the
" particulars which are from hence-
" forth to be written to the Sheriffs
" to levy in certain. And such as are
" for the reasons aforesaid to be re-
" moved out of the said annual Roll
" have nevertheless in ease of all
" Sheriffs for time to come, with
" respect to the labour and care of
" the Officers and Clerks to be by
" them undergone therein. It is
" this day ordered that the Clerk
" of the Pipe, the Secondaries and
" other sworn Clerks of the said
" Office in their several assignments
" shall in pursuance of the said
" Statute of *Rutland*, and the said
" Statute of 34 H. 8. use their best
" endeavour, diligence and care,
" with

" with as much convenient speed
" as a work of so great labour and
" consequence may well be perfor-
" med, fully to explain and set
" forth, and shall from henceforth
" fully explain and set forth, in the
" subsequent annual Roll of this
" Court, so many of the particu-
" lar Rents as they find out and
" discover by any of the Remem-
" brances, Books, Vicontiels of
" Sheriffs, or other Records of this
" Court, to have been, and which
" be appertaining to the making
" up of every of the said Firmes so
" charged in gross Summs as afore-
" said, and shall therein distinguish
" which and how much of those
" particular Rents have been and
" are to be yearly answered.

" And so much of the said Firmes
" as cannot be explained by setting
" forth the particulars, together
" with the particulars so set forth
" and explained, which have been
" in decay and unanswered by the
" space of forty years last past, and
" which

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“ which are become illeviable, shall
“ be thereupon removed and con-
“ veyed out of the said annual Roll
“ and Sheriffs Accompts into the
“ exannual Roll of this Court.
“ And that Commissions and Pro-
“ cess shall be from time to time a-
“ warded to regain and recover the
“ same, according to the true in-
“ tention of the said Statutes.

This Order produced these Ef-
fects.

I. Great care was taken to col-
lect and set forth the obscure Rents,
and upon what they were charged.

II. The particulars of those Rents
and Vicontiels that made up the
Sheriffs Firmes formerly, of *Reman-*
ent' Firme post terras datas, and
De Cremento Comitatus, as also
those Rents that were charged upon
the Sheriffs in gross Summs, as *De*
diversis Firmis, *De minutis particu-*
lis Serjantiarum, and such other
charges

charges in gross were wholly left out and omitted.

IV. Instead thereof such particular Rents and Vicontiels as made up formerly these Firmes and gross charges, or Money of them as could be discovered were particularly written out in the Summons of the Pipe, and in the great Roll first under the title of several Hundreds, wherein the Bills lay that were charged or had any Lands charged within them with these Vicontiels and the several Vills under the Titles of these Hundreds, and the several Lands that were charged within those Vills, as far forth as could be discovered.

V. Those Vicontiels that were part of those Firmes or gross charges, and likewise such particular Rents charged formerly in the annual Roll in particular, which had not been answered in forty years before, were removed out of the

H Summons

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Summons of the Pipe and great Roll into the exannual Roll to be put in proces as they could be discovered. And thus the form of the charge which had continued ever since 10 E. 1. as to the Firmes and gross Summs, was too lately changed to the great ease of the Sheriffs, of the Court and of the People, who were often harassed by the Sheriffs to make themselves favers, by levying these obscure incertain and illeviable Summs. And all this without any detriment to the King who indeed before had an appearance of great Firmes and Summs expressed in the Summons of the Pipe and great Roll, which yet were sworn off too little by the Sheriffs in pursuance of the Statute of 23 E. 6.

VI. But besides all this, the *Firma de proficuo Comitatus* was also wholly laid aside and put out of the charge of the Summons of the Pipe and the great Roll. It is true there

there is no clear warrant for putting the Firme out of charge by that order, for that order seems to extend onely to Rents and Vicontiels, which indeed made up the other in Firmes and gross Summs charged upon the Sheriffs. But this Firme was answered for the profits of Courts and other casual perquisites, and not in respect of any Vicontiel or annual Rent. But yet for all that, the true extent of that order might extend to put that Firme wholly out of charge, since it is apparent that the profits of the Sheriffs Courts whether Hundred-Courts, County-Courts or *time*, do scarce quit the charges of keeping them at this day, nor for a long time past. Neither is the King *de facto* at any loss thereby, for though before this order this Firme was indeed in charge and carried the shew of some benefit to the King, yet it was wholly sworn off by the Sheriffs by virtue of the Statute of 2 and 3 E. 6.

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Onely it seems reasonable that though the *Firma de proficuis* be put out of charge so that the Sheriff should not be compelled to answer a Firme to that which yields little or no benefit, yet that the Sheriff should be charged to accompt for the *Proficua Comitatus* as Bayly or *Custos* though not as Firmor.

And that therefore there should stand in charge upon him to accompt *de Proficuis*, which is all that I can find considerable to be supplied in that order, or in the present methodizing of the great Roll in relation hereunto. And although this order was made in the late time of trouble, yet it hath obtained and stood in force unto this day.

The late Act of this Parliament intituled *An Act for the preventing of the unnecessary delays of Sheriffs, &c.* hath this Clause suitable to the said order, viz.

“ And to the end that Sheriffs
“ may for the time future be eased
“ of

" of the great charge and trouble
" which they heretofore have been
" put to in passing their Accompts
" in the Exchequer, occasioned part-
" ly in regard that divers Summs
" of Money have stood charged
" upon them in gross without ex-
" pressing from what persons, or
" for what cause, or out of what
" Lands and Tenements , the
" same are particularly to be le-
" vied , or out of what particu-
" lars the said Summs in gross do
" arise, whereby it cometh to pass
" that the Sheriffs do still stand
" charged in gross with divers
" Summs of Money which were
" heretofore payable by Abbots,
" Priors, Persons attainted, and
" such other Persons , whose E-
" states are since come to the
" Crown, or are otherwise dis-
" charged or illeviable. And part-
" ly by the Accompt of Seisures,
" or foreign Accompts , and by
" exactation of undue Fees of She-
" riffs upon their opposals. But it

H 3 " is

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“ is enacted, &c. that no Sheriffs
“ shall be charged in accompt to
“ answer any illeviable Seisure,
“ Firme, Rent or Debt, or either
“ Seisure, Firme, Rent, Debt or
“ other matter or thing whatsoe-
“ ver, which was not writ in pro-
“ cess to him or them to be levied
“ wherein, the persons of whom,
“ or the Lands and Tenements out
“ of which, together with the cause
“ for which the same shall be so levi-
“ ed shall be plainly and particu-
“ larly expressed, but shall be there-
“ of wholly discharged without Pe-
“ tition, Plea or other trouble or
“ charge whatsoever.

This Act had in effect discharg-
ed the old charges in gross, had not
this business been before settled by
the order of 1650. But by that
order the same thing is done and
much more, and put into a very
good order.

And thus I have done with this
intricate Argument touching the
Sheriffs

Sheriffs Firmes. And the occasion of my strict enquiry into it was, a difference between the Auditors and the Clerk of the Pipe: upon the whole debate whereof, I found onely these matters.

1. That, in truth, the great occasion of complaint was, that the Clerks of the Pipe used different methods of accompting from the Auditors of the Revenue, the not observance whereof occasioned a mistaken representation by the Auditors that there was a deceit in their Accompts, whereas it appeared to be no such thing: for when both accompted their several ways, the issue was that the Accompts agreed in the conclusion.

2. That the Firme *de proficuo Comitatus* was put out of charge without Warrant, and it was thought by the Auditors, a great and considerable loss to the Crown, supposing that the Fees for execution of Pro-

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cess and Writs were to make up
that Firme: but this is sufficiently
unriddled before.

3. That there was an allowance
to the Sheriff of Bucks of a consider-
able yearly Summ, *ut Apparatori
Comitatus*: This indeed ought not
to be allowed at this day, the rea-
son thereof ceasing as hath been
shewed; and therefore from hence-
forth that charge is to be disallow-
ed, but the Clerk of the Pipe not
greatly blamable herein, because
there was an order of the Court
in the Queens time for making that
allowance: But the reason where-
upon that order was made was a
mistake and an error in the Court
not in the Clerk that followed the
order.

4. That there is no accompt gi-
ven for the Firmes of Baylywicks
as was anciently; which indeed,
was parci of the *Proficuum Comi-
tatus*, as hath been shewed. But
the

the truth is, there is no great reason for any such complaint, the Firmes of Baylywicks being taken away by Act of Parliament, and levy disfused in most places.

5. That when a Sheriff is in Surplusage they make it good unto him out of any other debt by the Sheriff himself, or any other Sheriff of the same or any other County, without any Warrant from my Lord Treasurer or the Court. And besides that, the other Sheriff is discharged upon the Roll of his Debt, and it doth not appear upon what reason. And indeed, this is a thing fit to be reformed, and that such allowances be not made without Warrant from the Lord Treasurer, or Order of Court, and that an Entry or Memorandum thereof be made upon the Roll of the Debts so discharged. But yet, the truth is, this manner of allowance hath been a long time used, and it is no novelty or late attempt, neither is there any great damage

damage to the King by it, for it is but the payment of one real Debt with another. But howsoever, this is fit to be reformed by order of the Court that the Sheriffs deliver not in the Roll of the Vicontiel as is required by the Statute. And it is true, he ought to doe it or should be sworn thereunto. But the necessity is not now so great, because the particular Rents are now charged upon the great Roll by virtue of the order of 1650, which doth in a great measure supply that defect, and yet the delivery in of the Vicontiel Roll may be fit to be revived.

The most of the rest of the complaints were touching particulars mischarged, or not charged, but the Errors were rather in the Complainers than in the Pipe, and for want of a clear understanding of those intricate and obscure proceedings of the Pipe. And upon a full search of the particulars, I find the Clerks of the Pipe gave very clear satisfaction therein.

Upon

Upon the whole matter of these Accompts, I do observe these Two or Three Observables.

I. That the inconvenience of retaining the old formalities of proceedings, the same terms and words, and very same mood of all things in Accompts, when the nature of things and times requires a change, and accommodation of new forms or expressions as a piece of hurtfull superstition ; therefore , although the change of forms of this nature is not to be done rashly and precipitantly, yet when the exigence of things requires it, there must be an accommodation to the present use, understanding and exigence of affairs.

And hence it is that the Accompts of the Auditors of the Revenue are more easily intelligible as being framed to the use and exigence of the times ; but the Accompts of the Pipe more mysterious and

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and perplexed, to persons unac-
quainted with them, for till 10 E. I.
they kept in all things the precise
form of writing their great Roll,
as had been used in King *Stephen's*
time. And the same form they
kept untill 1650, abating the alte-
rations made in 10 E. I. not with-
out great inconvenience to the
King's people and Sheriffs.

II. That these small Rents and
Vicontiels would be with much
more advantage to the King, and
be sold off to the several Persons
and Townships chargable therewith,
than be kept in method of collecti-
on, as now they are, unless some
more ready collecting of them by
the Receivers could be thought up-
on, provided the Money arising by
sale be laid out presently in more
certain Revenue: For, 1. They are
in respect of their smallness, and
dispersedness, and uncertainty of
charge and manner of collecting
very subject to be lost, as they
have

have been commonly from time to time. 2. The charge of collecting and accompting for them by the Sheriff is very great, and the trouble and charge to the people very much more. 3. The cost and trouble to the King in respect of Officers writing and other matters relating therunto, might be well retrenched thereby. And yet when all is done, it brings a great trouble, and makes a great noise as if it were a Revenue of great moment, and yet by that time the Sheriffs have done swearing of particulars as illeviable, or that they know not where to charge it, it becomes a very pitifull inconsiderable business, and scarce answering the charge of the collecting, accompting and answering it. For it must be observed that although by the order of 1650, the charge is more certain than formerly, yet the Sheriff hath still by the Law the benefit of the Statute of 2 and 3 E. 6. even as to those ascertained Rents, and if he cannot find them he is, and ought to

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to be discharged upon his oath there-
of. And accordingly is daily dis-
charged of many of those Rents
though rendred much more certain
by that order, and the pains and
method of the Charge and Accompt,
used in pursuance hereof. Whereby
in process of time, many, even of
these Rents particularly charged by
virtue of that order, will be succe-
sively lost.

Sed de his curent Superiores.

F I N I S.
